Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1010

THE CITY OF MOUNTAIN VIEW, GEORGIA; KEITH HURLEY, JIM HARRISON, EDDIE McCLOUDY, H. C. BIDDY, in their official capacities as Councilmen for the City of Mountain View, Georgia; ANNETTE KING, in her official capacity as Mayor of the City of Mountain View, Georgia; WESLEY R. ASINOF, in his official capacity as Judge, Recorder's Court, City of Mountain View, Georgia; JUNE WILLIAMS, in her official capacity as Clerk for the City of Mountain View, Georgia; WILLIAM B. SMITH, in his official capacity as Chief of Police of the City of Mountain View, Georgia; and HOWARD HILLIARD, individually and as a citizen and voter of the City of Mountain View, Georgia,

Appellants,

versus

CLAYTON COUNTY, GEORGIA; J. CHARLES GRISWELL, in his official capacity as Chairman, Board of Commissioners of Clayton County, Georgia; LOREN B. CHEAVES, ED P. ECHOLS, GERRY ADAMS, and ANNIE RUTH FORD, in their respective official capacities as Members of the Board of Commissioners of Clayton County, Georgia; HOWARD SMITH, in his official capacity as Chief of Police, Clayton County Police Department; ROBERT A. DEYTON, in his official capacity as Sheriff of Clayton County, Georgia; and ARTHUR BOLTON, in his official capacity as Attorney General of the State of Georgia,

Appellees.

APPEAL FROM THE SUPREME COURT OF GEORGIA

JURISDICTIONAL STATEMENT

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1978

No.

THE CITY OF MOUNTAIN VIEW, GEORGIA; KEITH HURLEY, JIM HARRISON, EDDIE McCLOUDY, H. C. BIDDY, in their official capacities as Councilmen for the City of Mountain View, Georgia; ANNETTE KING, in her official capacity as Mayor of the City of Mountain View, Georgia; WESLEY R. ASINOF, in his official capacity as Judge, Recorder's Court, City of Mountain View, Georgia; JUNE WILLIAMS, in her official capacity as Clerk for the City of Mountain View, Georgia; WILLIAM B. SMITH, in his official capacity as Chief of Police of the City of Mountain View, Georgia; and HOWARD HILLIARD, individually and as a citizen and voter of the City of Mountain View, Georgia,

Appellants,

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CLAYTON COUNTY, GEORGIA; J. CHARLES GRISWELL, in his official capacity as Chairman, Board of Commissioners of Clayton County, Georgia; LOREN B. CHEAVES, ED P. ECHOLS, GERRY ADAMS, and ANNIE RUTH FORD, in their respective official capacities as Members of the Board of Com-

missioners of Clayton County, Georgia; HOWARD SMITH, in his official capacity as Chief of Police, Clayton County Police Department; ROBERT A. DEYTON, in his official capacity as Sheriff of Clayton County, Georgia; and ARTHUR BOLTON, in his official capacity as Attorney General of the State of Georgia,

Appellees.

APPEAL FROM THE SUPREME COURT OF GEORGIA

JURISDICTIONAL STATEMENT

Now come Appellants, and file this Jurisdictional Statement, pursuant to Rules 13 and 15 of the Rules of the Supreme Court of the United States, in order to review the judgment of the Georgia Supreme Court from which this appeal has been taken, and shows the following in support thereof:

(a) REFERENCE TO REPORTS

The opinion and judgment of the Supreme Court of Georgia, sought to be reviewed on this appeal, affirming the judgment of the Superior Court of Clayton County, Georgia, dismissing the complaint of the Appellants, has not been reported as of the time of the submission of this Statement for printing, but a copy thereof is hereto appended and marked Appendix "A".

(b) GROUNDS OF JURISDICTION OF THIS COURT

(i)

This civil action was brought in the Superior Court of Clayton County, Georgia, seeking a Declaratory Judgment and Temporary and Permanent Injunction to declare a Statute of the State of Georgia unconstitutional as having been enacted in violation of the United States Constitutional provision prohibiting the enactment of a law impairing the obligation of a contract, and the action was brought pursuant to An Act of the Georgia General Assembly, (Acts 1945, p. 137; 1959, pp. 236, 237, Georgia Code Ann. §110-1101), empowering the superior courts of the State of Georgia with jurisdiction to declare rights and legal relations, upon petition, or other appropriate pleading.

(ii)

The judgment of the Supreme Court of Georgia affirming the judgment of the Superior Court of Clayton County dismissing the action, herein sought to be reviewed, was dated and entered September 6, 1978, and the Order of the Supreme Court of Georgia denying a Rehearing was dated September 26, 1978, and the Notice of Appeal was filed in the Supreme Court of Georgia on the 27th day of September, 1978.

(iii)

The statutory provision believed by the appellants to confer on this Court jurisdiction to review the judg-

ment of the Supreme Court of Georgia in question by Appeal is contained in Title 28, U.S.C.A., Section 1257(2) authorizing an appeal to this Court from final judgments or decrees rendered by the highest court of a State in which a decision could be had, where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution of the United States, and the decision is in favor of its validity.

(iv)

The cases believed to sustain the jurisdiction are *Irving Trust Co. v. Day*, 314 U.S. 556, 62 S.Ct. 398, 86 L.Ed. 452, holding that when United States Supreme Court is asked to invalidate a state statute on ground that it impairs obligation of contract, the existence of the contract and nature and extent of its obligations become "federal questions", for purpose of determining whether they are within scope and meaning of Federal Constitution, and for such purposes finality cannot be accorded to views of State Court, and *Municipal Investors Association v. City of Birmingham*, 316 U.S. 153, 62 S.Ct. 975, 86 L.Ed. 1341, holding that United States Supreme Court was compelled to pass on meaning of Michigan legislation without assistance of Michigan courts, since Supreme Court has obligation to determine for itself the basic assumptions upon which interpretations of Federal Constitution rests.

(v)

The State statute alleged by the appellants to violate the contract clause of the United States Constitution is set forth in Appendix B of this Jurisdictional Statement, and its citation will be found in Georgia Laws 1978, pp. 3003 to 3005.

A copy of the judgment of the Supreme Court of Georgia in this case, is included as a part of the opinion thereof, and is contained in Appendix "A", the Order denying Rehearing, and of the Notice of Appeal is set forth in Appendix C of this Jurisdictional Statement.

(c) THE QUESTIONS PRESENTED BY THIS APPEAL

1. Where a state legislature enacts a statute repealing the charter of a municipal corporation previously created with perpetual existence and by a referendum of the electors of the area in which such municipality is situated, and the constitution of such state guarantees that no office to which a person has been elected shall be abolished during the term for which such person was elected unless the same be approved by the people of the jurisdiction affected in a referendum on the question of its abolition, and there are officeholders who are serving fixed terms of office who have been elected, and whose terms of office have not expired, is such statute void as being repugnant to Article I, Section X, Par. 1 of the United States Constitution which

prohibits the States from passing any Law impairing the Obligation of a Contract?

2. Is a state constitutional provision, which has been adopted by a majority vote of the People of a State in a referendum on the question covenanting that no office to which a person has been elected shall be abolished during the term for which such person was elected unless the same be approved by the people of the jurisdiction affected in a referendum on the question, a "contract" within the meaning of the Contract Clause of the United States Constitution, so that the state legislature would be prohibited from violating the terms of such constitutional provision without impairing the obligation of a contract?

(d) STATEMENT OF THE CASE

The legislature of the State of Georgia, in 1956, granted a charter to the City of Mountain View, subject to a referendum by the "registered and qualified voters residing in said city limits," (Ga. Laws 1956, pp. 2518-2525, Appendix D). The charter provided, among other things, for a municipal government consisting of a mayor and four councilmen "who are hereby constituted a body corporate under the name and style of the City of Mountain View; and by that name and style shall have perpetual succession; shall be capable of contracting, buying and holding property, suing and being sued." (Section 3).

Section 10 of the same Act granted to the mayor and council the authority to grant franchises for the construction and maintenance of public utilities, and to "make such contracts with such persons, firms or corporation * * * * as the mayor and council shall deem proper."

There was in existence at the time of the grant of this charter a constitutional provision of the Georgia Constitution approved by the voters of the State in a referendum on the question, which reads as follows:

> "No office to which a person has been elected shall be abolished, nor the term of the office shortened or lengthened by local or special bill during the term for which such person was elected unless the same be approved by the people of the jurisdiction affected in a referendum on the question." (Ga. Const., Art. III, Sec. VII, Par. IX, Ga. Code Ann. §2-1309).

This Charter was ratified by the voters of the area to be affected, and the municipality continued to function under the charter electing the governing authority, municipal officials, granting business licenses, operation of police and fire departments, and operation of a recorder's court. On January 20, 1978, House Bill 757 was approved by the Governor, purporting to repeal the charter of 1956. On this same date an order was granted by a judge of the superior court temporarily enjoining county and State officials from exercising

any governmental control over the area in which the municipality had been granted municipal authority. The matter later came on to be heard in the Superior Court of Clayton County, and, after a hearing the petition for injunction and declaratory judgment was dismissed by the court. However, the court granted a stay order authorizing the municipal authorities to continue their operation of the city under the charter of 1956 pending a final disposition on appeal (Appendix E).

The petition for declaratory judgment and injunctive relief was brought by all the appellants, and it was contended that Act 757 was a law impairing the obligation of a contract in violation of the Federal Constitution, and also was enacted in violation of a number of non-federal grounds, not material to the appeal to this Court. Appeals were taken to the Georgia Supreme Court, and upon that Court's affirmance, the appeal has been taken to this Court. The Federal Constitutional question herein raised by the appellants was urged in the original petition to the Superior Court of Clayton County in the pleadings. Count Three of the Petition, (Appendix F), alleged that the mayor and council of the City of Mountain View, elected three of the plaintiffs to the offices of Judge, City Clerk and Chief of Police for a term of four (4) years commencing January 1, 1978 and "contracted" with them to perform the duties of the respective offices at non-reducible salaries of $1,000 per month, $11,500. per year, and $1,000. per month respectively. A copy of the

Home Rule Amendment (Ga. Laws 1978, pp. 4901 to 4906) adopted by the mayor and council pursuant to Georgia Home Rule Statutes in 1977, creating the offices of Judge, City Clerk and Chief of Police, and fixing their terms of office, is attached to this Jurisdictional Statement as Appendix D (1). The Supreme Court of Georgia, in Division 5 of its opinion, (Appendix A), made no specific finding of fact as to whether or not the appellants' offices were founded on contract.

(e) GROUNDS UPON WHICH FEDERAL QUESTION IS CONTENDED TO BE SUBSTANTIAL

> "When this (United States Supreme) Court is asked to invalidate a state statute upon the ground that it impairs the obligation of a contract, the existence of the contract and the nature and extent of its obligation become federal questions for the purposes of determining whether they are within the scope and meaning of the Federal Constitution, and for such purposes finality cannot be accorded to the views of a state court." *Irving Trust Co. v. Day*, 314 U.S. 556, 62 S.Ct. 398.

1.

When the legislature of a state grants a charter to a fixed area of the state subject to a referendum by the "registered and qualified voters residing in said city limits", and such registered and qualified voters accept

the charter and continue to operate under its provisions for more than twenty years, and it is provided in the charter that it is to have perpetual succession and is capable of contracting, buying and holding property, it is a substantial federal question whether a subsequent state statute repealing and revoking such charter without the permission of the "registered and qualified voters residing in said city limits" violates the contract clause of the federal constitution, and is a law impairing the obligation of a contract.

2.

Where a state constitutional provision, adopted by the People of the State, as distinguished from the legislature, prohibits the abolishment of an office by local or special bill during the term for which such person was elected unless the same be approved by the people of the jurisdiction affected in a referendum on the question, a substantial federal question is presented as to whether such state constitutional provision is a contract between the People of the State and their representatives whereby the enactment of a statute breaching its terms becomes a law impairing the obligation of that contract.

CONCLUSION

Appellants respectfully submit that they have shown the reasons why the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution.

Respectfully submitted,

Wesley R. Asinof
Attorney for Appellants
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Fayetteville, Georgia 30214

APPENDIX "A"

453, 454
553, 554 to 4

In the Supreme Court of Georgia

Decided: September 6, 1978

33622. City of Mountain View et al. v. Clayton County et al.
33623. Attorney General of Georgia v. City of Mountain View et al.
33625. Logan et al. v. Strickland, Commr., et al.
33626. Strickland, Commr., et al. v. Logan et al.

UNDERCOFLER, Presiding Justice.

Georgia Laws, 1978, p. 3003, a local act, approved January 20, 1978, repealed the City of Mountain View's charter. Ga. L. 1956, p. 2518. Officials of Mountain View and persons holding city alcoholic beverage licenses brought suits challenging the validity of the 1978 act. They contend that (1) the publisher's affidavit certifying the publication of notice of intention to introduce into the General Assembly does not comply with the requirements of the Georgia Constitution, (2) a city charter may not be repealed without a referendum, (3) a city charter may not be repealed by a

local act, (4) the repeal of a city charter is prohibited by the "home rule" provisions of the Georgia Constitution, and (5) the 1978 act repealing Mountain View's charter impairs the obligation of contracts. The trial court held the 1978 act valid. We affirm.

1. Appellants argue that the publisher's affidavit[1] attached to the 1978 enrolled act does not comply with

1 The Affidavit of Publication attached to the enrolled bill and made a part of the statute reads as follows: "STATE OF GEORGIA, COUNTY OF CLAYTON. Personally appeared before the undersigned Jim Wood, Publisher, who on oath says that he is Publisher of News/Daily, and that the legal advertisement which appears below was published in said newspaper on the following dates: December 20, 27 and January 3, 1978. JIM WOOD (Seal), /s/ Jim Wood, Publisher.

"Notice of Intention to Introduce Local Legislation. Notice is hereby given that there will be introduced at the regular 1978 session of the General Assembly of Georgia, a bill to repeal the Act incorporating the City of Mountain View in the County of Clayton, Georgia, approved February 23, 1956 (Ga. Laws, 1956, p. 2518), as amended, and for other purposes.

This 20th day of December, 1977.

/s/ Rudolph Johnson
Representative,
72nd District
/s/ William J. Lee
Representative,
72nd District
/s/ Jim Wood
Representative,
72nd District
/s/ Jimmy Benefield
Representative,
72nd District
/s/ Terrell A. Starr
Senator,
44th District"

the Georgia constitutional mandate[2] because it failed to state (1) that the notice was published "as provided by law," (2) that the News/Daily is a newspaper in which sheriff's advertisements for the locality are published, and (3) the year of the first two dates of publication, to wit: "December 20, 27," is not shown.

An affidavit of publication of notice of intention to introduce a local act into the General Assembly is essential to its validity. *Smith v. McMichael,* 203 Ga. 74 (45 SE2d 431) (1947). It certifies that the local people were notified of the proposed legislation as required by law. However, no particular form of affidavit is required. It suffices if a reasonable interpretation shows compliance with the constitutional provision. In our opinion the affidavit here is adequate. The newspaper in which the notice appeared is named. The publisher certified that the notice was a "legal advertisement" which is tantamount to certifying that the newspaper was the official organ of the county in which sheriff's advertisements are published. The notice is dated December 20, 1977, a Tuesday. The publisher certified the notice

2 "No local or special bill shall be passed, unless notice of the intention to apply therefor shall have been published in the newspaper in which the Sheriff's advertisements for the locality affected are published, once a week for three weeks during a period of sixty days immediately preceding its introduction into the General Assembly. No local or special bill shall become law unless there is attached to and made a part of said bill a copy of said notice certified by the publisher, or accompanied by an affidavit of the author, to the effect that said notice has been published as provided by law . . . ." Ga. Const., 1976, Art. III, Sec. VII, Para. IX (Code Ann. § 2-1309).

was published "December 20, 27 and January 3, 1978." We take judicial notice that these dates are successive Tuesdays. It is apparent that December 20 is December 20, 1977, the date of the notice itself, and that the notice was published again the following Tuesday, December 27, 1977, and finally the following Tuesday, January 3, 1978, after which the act was introduced into the General Assembly on January 9, 1978. *Cain v. Lumpkin County*, 229 Ga. 274 (190 SE2d 910) (1972). Appellants do not claim the affidavit is fraudulent. We find the affidavit shows publication in the newspaper in which sheriff's advertisements for the locality affected are published once a week for three weeks during a period of sixty days immediately preceding its introduction into the General Assembly "as provided by law." The constitutional provision has been satisfied here.

2. Appellants argue the General Assembly does not have the power to abolish the charter of a municipality without a referendum submitted to the people of the area affected because this violates the constitutional provision prohibiting the abolishing of elective office during term.[3] This provision was intended to correct an evil often practiced in this state, i.e., the use of local legislation specifically directed to amending or

3 ". . . No office to which a person has been elected shall be abolished, nor the term of the office shortened or lengthened by local or special bill during the term for which such person was elected unless the same be approved by the people of the jurisdiction affected in a referendum on the question . . . ." Ga. Const., 1976, Art. III, Sec. VII, Para. IX (Code Ann. § 2-1309).

abolishing the term of a specified elective office to remove an incumbent or prolong his tenure. See Records of the Constitutional Commission, 1943-44, Vol. I, pp. 351-352. This language may not be extended by implication to place a restraint upon the general power of the General Assembly to create or abolish the charters of municipal corporations, either by local or general law.

". . . [M]unicipalities are creatures of the legislature, and their existence may be established, altered, amended, enlarged or diminished, or utterly abolished by the legislature." *Troup County Electric Membership Corp. v. Georgia Power Co.*, 229 Ga. 348, 352 (4) (191 SE2d 33) (1972) and cases cited.

3. Appellants argue that the General Assembly has provided for the self government of municipalities by general law, as authorized by the Georgia Constitution[4] and it may not now legislate in this area by local act. We do not agree. Appellants overlook Ga. L. 1965, p. 298 (Code Ann. § 69-1016) wherein the General Assembly specifically reserved the right to dis-

4 "The General Assembly is authorized to provide by law for the self government of municipalities and to that end is hereby expressly given the authority to delegate its powers so that matters pertaining to municipalities may be dealt with without the necessity of action by the General Assembly. Any powers as provided herein shall be exercised subject only to statutes of general application pertaining to municipalities." Ga. Const., 1976, Art. IX, Sec. III, Para. I (Code Ann. § 2-6001).

solve municipalities by local act.[5] *Lee v. City of Jesup*, 222 Ga. 530 (150 SE2d 836) (1966). See also *State of Georgia v. Golia*, 235 Ga. 791 (222 SE2d 27) (1976); *Bruck v. City of Temple*, 240 Ga. 411 (240 SE2d 876) (1977). Ga. L. 1947, p. 1545, Code Ann. § 69-105, is inapposite. It authorizes the superior court to dissolve municipalities which have not functioned for a period of ten years.

4. There is no merit in appellants' argument that the "Supplementary Home Rule" provision of the Georgia Constitution[6] vests municipalities with almost autonomy and the General Assembly is powerless to withdraw the powers granted by the Constitution.

This provision provides uniformity of certain powers of municipalities, not autonomy. The General Assembly may not remove these powers in a random fashion. However, it does not operate to abolish the General Assembly's plenary power to create and dis-

5 "No municipality shall be incorporated, dissolved, merged or consolidated with any other municipality or municipal boundaries changed, except by local Act of the General Assembly or by such methods as may be provided by general law."

6 "Except as otherwise provided in this paragraph as to planning and zoning, nothing contained within this paragraph shall operate to prohibit the General Assembly from enacting general laws relative to the above subject matters or to prohibit the General Assembly by general law from regulating, restricting or limiting the exercise of the above powers, but, the General Assembly shall not have the authority to withdraw any such powers. The General Assembly shall act upon the above subject matters only by general law." Ga. Const., 1976, Art. IX, Sec. IV, Para. II (Code Ann. § 2-6102).

solve municipal corporations. See *City of Atlanta v. Myers*, 240 Ga. 261 (240 SE2d 60) (1977).

5. The Act of the General Assembly revoking the charter of the City of Mountain View does not operate to impair the obligation of contracts claimed under by the parties in these actions in violation of state or federal constitutions. The offices of city judge, clerk and chief of police are public offices authorized under the charter of the City of Mountain View. The right of an incumbent to an office depends upon the law under which he holds. If the law is capable of being repealed, the right of the officer is gone. See *City Council of Augusta v. Sweeney*, 44 Ga. 463, 466 (1870); *Smith v. Abercrombie*, 235 Ga. 741, 749 (221 SE2d 802) (1975). Also, we have consistently held that holders of alcoholic beverage licenses do not acquire property rights when granted a beverage license under the police power. *McKown v. City of Atlanta*, 184 Ga. 221, 222 (190 SE 571) (1937). Such licenses also do not acquire the status of vested property rights as argued by appellants. See *Thacker v. Morris*, 196 Ga. 167 (26 SE2d 329) (1943). These licenses are not revoked as the result of an act of the issuing authority, therefore, *Hornsby v. Allen*, 326 F2d 605 and other federal cases dealing with due process issues are inapposite.

Judgment affirmed in Case Nos. 33622 and 33625; the cross appeals in Case Nos. 33623 and 33626 are dismissed. All the Justices concur.

APPENDIX "B"

LOCAL AND SPECIAL
ACTS AND RESOLUTIONS
OF THE
GENERAL ASSEMBLY
of the
STATE OF GEORGIA

1978

City of Mountain View — Charter Repealed

No. 757 (House Bill No. 1228).

AN ACT

To repeal an Act entitled "An Act to create and incorporate the City of Mountain View, in the County of Clayton, Georgia, and grant a charter to that municipality under that name and style; to prescribe and define the corporate limits thereof; to provide a municipal government for said city, and to declare the rights, powers, privileges and liabilities of said corporation; to authorize said city to levy and collect a tax for purposes authorized herein; to authorize the construction of waterworks, sewers, streets, parks, and to provide for the payment of the same; to provide for granting franchises to persons, firms or corporations

for construction and maintenance of public utilities; to declare and define the police powers of said city; to declare and define the duties and powers of the officers of said city; to provide for the election of a mayor and council of said city; to provide for passage of ordinances and granting licenses for the conduct of business; to provide for a referendum before this Act becomes effective; and for other purposes.", approved February 23, 1956 (Ga. Laws 1956, p. 2518), as amended by an Act approved April 21, 1967 (Ga. Laws 1967, p. 3323); an Act approved April 25, 1969 (Ga. Laws 1969, p. 3636) and by an Act approved March 31, 1976 (Ga. Laws 1976, p. 3970); to repeal conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia:

Section 1. An Act entitled "An Act to create and incorporate the City of Mountain View, in the County of Clayton, Georgia, and grant a charter to that municipality under that name and style; to prescribe and define the corporate limits thereof; to provide a municipal government for said city, and to declare the rights, powers, privileges and liabilities of said corporation; to authorize said city to levy and collect a tax for purposes authorized herein; to authorize the construction of waterworks, sewers, streets, parks, and to provide for the payment of the same; to provide for granting franchises to persons, firms or corporations for construction and maintenance of public utilities; to

declare and define the police powers of said city; to declare and define the duties and powers of the officers of said city; to provide for the election of a mayor and council of said city; to provide for passage of ordinances and granting licenses for the conduct of business; to provide for a referendum before this Act becomes effective; and for other purposes.", approved February 23, 1956 (Ga. Laws 1956, p. 2518), as amended by an Act approved April 21, 1967 (Ga. Laws 1967, p. 3323), an Act approved April 25, 1969 (Ga. Laws 1969, p. 3636) and by an Act approved March 31, 1976 (Ga. Laws 1976, p. 3970), is hereby repealed in its entirety.

Section 2. All laws and parts of laws in conflict with this Act are hereby repealed.

Notice

Notice of Intention to
Introduce Local Legislation.

Notice is hereby given that there will be introduced at the regular 1978 session of the General Assembly of Georgia, a bill to repeal the Act incorporating the City of Mountain View in the County of Clayton, Georgia, approved February 23, 1956 (Ga. Laws 1956, p. 2518), as amended, and for other purposes.

This 20th day of December, 1977.

/s/ Rudolph Johnson
Representative,
72nd District
/s/ William J. Lee
Representative,
72nd District
/s/ Jim Wood
Representative,
72nd District
/s/ Jimmy Benefield
Representative,
72nd District
/s/ Terrell A. Starr
Senator, 44th District

Georgia, Clayton County.

Personally appeared before the undersigned Jim Wood, Publisher, who on oath says that he is the Publisher of News/Daily, and that the legal advertisement which appears above was published in said newspaper on the following dates: December 20, 27, 1977 and January 3, 1978.

/s/ Jim Wood
Publisher

Sworn to and subscribed before me,
this 4th day of January, 1978.

/s/ Eleanor G. Simon
Notary Public, Georgia State at Large.
My Commission Expires April 4, 1978.
(Seal).
Approved January 20, 1978.

APPENDIX "C"

33622
33625

SUPREME COURT OF GEORGIA

Atlanta, September 26, 1978

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

33622. City of Mountain View et al v. Clayton County et al.

33625. Logan et al. v. Strickland, Commr., et al.

Upon consideration of the Motions for Rehearing filed in these cases, it is ordered that they be hereby denied. All the Justices concur.

IN THE SUPREME COURT OF GEORGIA

CITY OF MOUNTAIN VIEW, GEORGIA, et al
Appellants,

versus No. 33622

CLAYTON COUNTY, GEORGIA, et al,
Appellees.

NOTICE OF APPEAL

Notice is hereby given that The City of Mountain View, Georgia, Keith Hurley, Jim Harrison, Eddie McCloudy, H. C. Biddy, in their official capacities as Councilmen for the City of Mountain View, Georgia, Annette King, in her official capacity as Mayor of the City of Mountain View, Georgia, Wesley R. Asinof, in his official capacity as Judge, Recorder's Court, City of Mountain View, Georgia, June Williams, in her official capacity as Clerk, for the City of Mountain View, Georgia, William B. Smith, in his official capacity as Chief of Police of the City of Mountain View, Georgia, and Howard Hilliard, individually and as a citizen and voter of the City of Mountain View, Georgia, appellants in the above styled Appeal to the Supreme Court of Georgia, do hereby appeal to the Supreme Court of the United States from the judgment affirming the final judgment of the Superior Court of Clayton County, entered the 6th day of September,

1978, and from the judgment denying the Motion for a Rehearing dated the 26th day of September, 1978.

This appeal is being taken pursuant to Title 26 U.S.C. §1257 and Rule §10 of the Rules of the Supreme Court of the United States.

/s/ WESLEY R. ASINOF
Wesley R. Asinof
Attorney of Record
for Appellants

Box 461
Fayetteville, Georgia 30214

CERTIFICATE OF SERVICE

I do hereby certify that I have this date served copies of this Notice of Appeal on counsel of record for each of the opposing parties in this case by depositing one copy of said Notice of Appeal to each of the following named counsel of record with sufficient postage thereon to insure delivery by first class mail, depositing same in the United States mail, and addressed to each of the following named counsel:

John R. McCannon,
114 N. McDonough Street,
Jonesboro, Georgia 30236

George E. Glaze,
120 N. McDonough Street,
Jonesboro, Georgia 30236

Michael J. Bowers,
Senior Assistant Attorney General
132 State Judicial Building
Atlanta, Georgia 30334

This 27 day of Sept. 1978.

/s/ WESLEY R. ASINOF
Wesley R. Asinof
Attorney of Record
for Appellants.

APPENDIX "D"

MOUNTAIN VIEW CHARTER.

No. 150 (House Bill No. 287).

An Act to create and incorporate the City of Mountain View, in the County of Clayton, Georgia, and grant a charter to that municipality under that name and style; to prescribe and define the corporate limits thereof; to provide a municipal government for said city, and to declare the rights, powers, privileges and liabilities of said corporation; to authorize said city to levy and collect a tax for purposes authorized herein; to authorize the

construction of waterworks, sewers, streets, parks, and to provide for the payment of the same; to provide for granting franchises to persons, firms or corporations for construction and maintenance of public utilities; to declare and define the police powers of said city; to declare and define the duties and powers of the officers of said city; to provide for the election of a mayor and council of said city; to provide for passage of ordinances and granting licenses for the conduct of business; to provide for a referendum before this Act becomes effective; and for other purposes.

Be it enacted by the General Assembly of the State of Georgia, and it is hereby enacted by the authority of the same:

Incorporation.

Section 1. That the City of Mountain View, in Clayton County, be and the same is hereby incorporated as a city under the name and style of the City of Mountain View.

Corporate limits.

Section 2. The corporate limits of said city shall include all of that area contained in Land Lots 12, 13, 20 and 21 and that portion of Land Lots 11 and 22 that lies east of the center line of Mud Creek, that lies in the 13th District of Clayton County, Georgia.

Corporate powers; Mayor and council; Elections.

Section 3. That the municipal government of said city shall be vested in a mayor and four (4) councilmen, who are hereby constituted a body corporate under the name and style of the City of Mountain View; and by that name and style shall have perpetual succession; shall be capable of contracting, buying and holding property, suing and being sued; shall have all the incidental rights usually conferred upon municipalities and all the rights hereinafter conferred. Upon the approval of this Act as hereinafter provided, an election shall be called for the election of a mayor and council, who shall hold their office until their successors are elected and qualified, the mayor and one councilman being elected for a term expiring January 1, 1957, and three councilmen elected for a term expiring January 1, 1958, after which said officers shall be elected for a term of two years, and until their successors are elected and qualified. On the first Saturday in December of each year beginning in 1956 there shall be an election held for the election offices expiring on January 1st immediately following. Said election to be held at some public place designated by the mayor and council of said city and shall be held between the hours of 1 and 8 o'clock P. M., and shall be conducted by three persons who are registered voters and reside in said city, said persons to be named by said mayor and council. Said election shall otherwise be conducted as are elections for members of the General Assembly of Georgia. The mayor and council shall have the authority to adopt the necessary ordinances providing for the rules and

regulations to govern the holding of all elections, governing registration, voting, declaring the results, filing and hearing contests, and all other matters connected therewith.

Their oath.

Section 4. The mayor and councilmen shall each take and subscribe the following oath in their minute book: "I do swear that I will faithfully and impartially administer the laws of the City of Mountain View to the best of my skill and ability."

Ordinances.

Section 5. Said mayor and council shall hold monthly meetings and any call meetings, when so desired to conduct the government of the city. They shall have authority to enact any ordinance or laws for the government of the city permitted by this charter in the following manner: Any proposed law or ordinance shall be submitted in written form to the mayor and council at a regular meeting, at which time it shall be read. At the next regular meeting it shall again be read and voted upon, a majority vote of said mayor and council being required to pass such a law or ordinance. The mayor shall vote on all laws and ordinances and upon their passage they shall be recorded in the minute book of said city. The mayor and three councilmen shall constitute a quorum to transact other business for said city; and in the absence of the mayor such other business may be transacted by four councilmen, they designating one of their number as mayor pro tem.

Marshal.

Section 6. Said mayor and council shall have the authority to define offenses against the government of the city; to prescribe penalties, and provide for the enforcement of its laws; to elect a marshal and such other employees as may be needed, to fix their salaries and require them to give such bond as they may deem proper for the faithful performance of their duties. Said marshal shall be elected annually at the first meeting of the council each year, and he and such other employees as may be elected shall hold their office at the pleasure of the council; said marshal shall arrest all persons violating laws of said city, with or without warrant or summons and bring them before the mayor for trial. He shall be the ministerial officer of the mayor's court and shall enforce its sentences and collect its fines. He shall enforce all the laws of said city and orders of the mayor and council.

Taxation.

Section 7. Said mayor and council shall have the right to require a license to conduct any and/or all types and kinds of business or businesses in said city, and set the cost and/or fee for such license; but no ad valorem tax shall ever be levied until such taxation has been approved by the majority of voters residing in said city,

who are qualified and properly registered to vote in Clayton County elections, at a referendum called for that purpose. If such ad valorem tax is voted, the mayor and council are hereby authorized to set up the necessary method for making tax returns, issuing fi. fas., collecting such fi. fas. by selling real or personal property to satisfy the same, and authorizing the marshal to make and execute deeds of title to the purchaser of such property at such tax sale. All of such sales shall be held on the first Tuesday in each month, between the hours of 10:00 A. M. and 4:00 P. M. at the place of holding the elections for said city. Personal property may be sold by advertising the same by posting three notices in said city 10 days before such sale, and real property may be sold after advertising the same for four weeks in a newspaper published in said county.

City funds.

Section 8. At the first meeting of the mayor and council in each year they shall determine what licenses are to be issued and the cost thereof, and if an ad valorem tax levy has been authorized, they shall order all property in said city to be returned for taxation, and the returns entered in a return book kept for this purpose, and all property in the said city limits shall be taxable that year. All fines, license, fees, taxes and other city funds shall be deposited and held by the mayor, subject to orders of the council. He shall give a bond to the city council in the sum of $1,000.00 for the faithful performance of his duties. This authority to receive

and disburse funds may be delegated, by a majority vote of said mayor and council, to any one who is qualified to hold office in the city under this charter, or this authority may be delegated by said mayor and council by a majority vote of that body, to any one who is a registered voter as described hereinabove.

Mayor's court.

Section 9. The mayor shall hear and try all cases against persons charged with violations of the laws of said city and upon conviction may impose a fine not to exceed fifty ($50.00) dollars or in lieu thereof, imprisonment at labor on the streets or public works not exceeding 25 days, or both, at his discretion. If the mayor is disqualified the council shall elect a mayor pro tem., to serve in his place. Anyone dissatisfied with the mayor's decision may appeal to the council and be tried by them and their decision shall be final.

Utilities.

Section 10. The mayor and council shall have the authority to construct waterworks and sewers, paying for them out of the public funds of the city or by charges for the use of such privileges. They shall have the authority to enact reasonable sanitary regulations and to enforce the same. Said mayor and council shall also have full power and authority to grant franchises over, under and upon its streets, alleys, lanes, sidewalks, parks, and other public places to any person,

firm or corporation for the furnishing of water, telephones, electric lights and power, gas and sewerage or any of them to the city and its residents; and to make such contracts with such persons, firms or corporation for the furnishing of water, electric lights and power, gas and sewerage or any of them as the mayor and council may deem proper.

Compensation of mayor and council.

Section 11. The mayor's and councilmen's salaries shall be fixed annually and shall be paid out of the public funds of the city, if any, and all other legal or necessary expenses of the government of said city, not otherwise provided for, shall likewise be paid. In case there is a vacancy in the office of mayor or council, the council shall have the right to elect a successor to said mayor or councilman who shall serve until the next election. Salaries of said mayor and council shall be fixed by a majority vote of said council.

Section 12. The mayor and council shall have the authority to pass regulations and ordinances for the general protection and welfare of said city, and such other rights and privileges as are usually granted such municipalities.

Section 13. The Ordinary of Clayton County, Georgia, is hereby authorized and directed upon the approval of this Act to call an election and supervise the same, on or before June 1, 1956, and submit to the

registered and qualified voters residing in said city limits, by referendum the following proposal: For: The incorporation of the City of Mountain View. Against: The incorporation of the City of Mountain View.

Referendum.

Said ordinary shall provide ballots and hold said election under such rules and regulations as he may deem proper, and if a majority of those voting favor the said incorporation, then in that event this charter shall be of full force and effect immediately, and in event of such adoption it shall be the duty of the said ordinary to call another election within 60 days for the election of a mayor and council who shall hold office as hereinbefore provided. Any person qualified to vote in the last general election and who resides within the city limits, or proposed city limits shall have the right to vote in either or both elections. D. P. Spiker, J. A. Waller, D. C. Corbett, and V. L. Crow are herein named as a board of registrars to assist the ordinary in preparing a voters' list for holding the first election herein mentioned and all whose names appear on the said voters' list shall be eligible to vote for said mayor and council provided they register in a book provided by said registrars at least 30 days before the election for the first mayor and council is held.

Elections.

Section 14. The elections referred to in the preceding paragraph shall be held and paid for in the same

manner as if said ordinary was calling a special election for county matters.

Section 15. Be it further enacted, that all laws and parts of laws in conflict with this Act are hereby repealed.

Georgia, Clayton County.

I, Jack Troy, do hereby certify that I am the editor of the Forest Park Free Press and Clayton County News and Farmer, the official organ of Clayton County and that the foregoing legislation was advertised in my paper on the following dates: January 5, January 12, and January 19, 1956, as provided by law.

This the 20th day of January, 1956.

/s/ Jack Troy,
Editor The Forest Park Free Press and Clayton County News and Farmer.

Subscribed and sworn to before me, this 20 day of January, 1956.

/s/ Douglas L. Harper,
Notary Public, Georgia, State at Large.
My commission expires Aug. 16, 1959.
(Seal)

Notice of Intention to Apply for Local Legislation.

Notice is hereby given that the undersigned will apply to the 1956 regular session of the General Assembly of Georgia for passage of local legislation entitled, "An Act to create and incorporate the City of Mountain View, in the County of Clayton, Georgia, and grant a charter to that municipality under that name and style; to prescribe and define the corporate limits thereof; to provide a municipal government for said city, and to declare the rights, powers, privileges and liabilities of said corporation; to authorize said city by referendum to levy and collect a tax for purposes authorized herein; to authorize the construction of waterworks, sewers, streets, parks, and to provide for the payment of the same; to provide for granting franchises to persons, firms or corporations for construction and maintenance of public utilities; to declare and define the police power of said city; to declare and define the duties and powers of the officers of said city; to provide for the election of a mayor and council of said city; to provide for passage of ordinances and granting licenses for the conduct of business; to provide for referendum before this Act becomes effective; and for other purposes.

Amendments germane to said legislation may be offered and adopted as provided by law.

This 31st day of December, 1955.

D. P. Spiker.
J. A. Waller.
D. C. Corbett.
V. L. Crow.

Approved February 23, 1956.

APPENDIX "D(1)"

City of Mountain View — Recorder's Court.

An Ordinance.

To amend the charter of the City of Mountain View, as amended, so as to provide for the election of the Judge of the Recorder's Court, City Marshal and City Clerk by the Mayor and Council for four (4) year terms of office; to provide for their removal from office for cause; to provide for the Mayor and Council to fix their compensation; to provide additional duties for the Judge; to provide for continuous employment for all city employees; to provide for a hearing prior to discharge; to provide for the duties of the Marshal or Chief of Police; to repeal conflicting laws; to provide an effective date; and for other purposes.

Be it ordained by the mayor and council of the City of Mountain View, and it is so ordained by the authority

thereof, pursuant to the authority vested in the mayor and council, as governing authority of the City of Mountain View by Georgia Code, Title 69-1017(a) and (b) 1, (Acts 1965, pp. 298, 299), known as the "Home Rule Bill", to amend its charter, said charter is hereby amended as follows:

Section 1.

An Act of the General Assembly creating and incorporating the City of Mountain View, approved February 23, 1956, and which Act is set out in Georgia Laws 1956, pages 2518 through 2525, as amended by an Act of the General Assembly as set out in Georgia Laws 1969, beginning on page 3636, and other Acts amendatory thereof, is hereby amended by striking section 9 in its entirety and inserting in lieu thereof a new section 9, to read as follows:

"Section 9. There is hereby established and created for the City of Mountain View a recorder's court which shall be presided over by a judge elected by the mayor and council. The judge shall be at least thirty (30) years of age and shall have been a citizen of the United States and of the State of Georgia for ten (10) years prior to his election, shall have practiced law for at least three (3) years and shall meet such other qualifications as the mayor and council of the City of Mountain View may prescribe. The judge of said court shall have the right to designate the dates and times for holding such court. The mayor and council shall set the compensation for

such judge and the manner of paying the same out of the general funds of the city. The judge shall serve during the term for which he has been elected, and may not be removed during such term except by a vote of at least four (4) of the (5) members of the entire governing authority of the City of Mountain View for cause and upon notice and an opportunity to be heard. Before entering upon the duties of his office, the judge shall take and subscribe an oath before some officer authorized to administer it, to faithfully discharge the duties of his office. In the absence of the judge, or in the event the judge is unable to act or serve, then the mayor of the city shall act as judge. It shall be the duty of the judge to hear and try all of those charged with violating the ordinances and laws of said city, and upon conviction he may impose a fine not to exceed $150.00, or in default of payment of said fine, by labor on the streets of said city not to exceed thirty (30) days, or confinement in the common jail not to exceed thirty (30) days, or by fine not to exceed $150.00 and confinement not to exceed thirty (30) days. The judge, and the mayor when so acting shall be to all intents and purposes, a justice of the peace, so far as to enable him to issue warrants for municipal or state offenses committed within the corporate limits of the said city, which warrants shall be executed by the chief of police or any policeman of said city and commit offenders to the jail or admit them to bail. It shall be the duty of the jailor of said city to receive all such prisoners so committed and to safely keep some until discharged by due course of law. The term of office of the judge shall com-

mence January 1, 1978, and he shall be elected by a majority vote of the mayor and council at its regularly scheduled meeting in November prior to the commencement of his term of office, and shall serve for four years and until his successor shall have been elected and qualified. Successive terms of office shall be filled for like terms and in like manner. The compensation for the judge may not be diminished during the term of his office. It shall be the further duty of the judge, when requested, to render official advisory opinions to the governing authority on matters of law, to prepare, present and draft proposed ordinances and resolutions, attend all meetings of the mayor and council, and shall act as the city attorney and represent the city of Mountain View and the officials of the city when sueing or being sued in their official capacity in all civil litigation in the other courts. The mayor may, without a request from the judge, and shall, when so requested, employ the services of a member of the Bar of the State of Georgia to prosecute any case or cases in the recorder's court, and pay such compensation therefore as may be fixed by the mayor and council. The term 'prosecute', as used herein, shall also include representing the city in all certiorari petitions in the superior court, habeas corpus proceedings, or appeals of certiorari proceedings in the Court of Appeals or Supreme Court brought to review convictions of ordinance violations in the Recorder's Court of the City of Mountain View."

Section 2. Said Act is further amended by striking the following from Section 6:

"Said marshal shall be elected annually at the first meeting of the council each year, and he and such other employees as may be elected shall hold their office at the pleasure of the council," and inserting in lieu thereof the following provision:

"The marshal of the city shall hold the title of Chief of Police, and he, along with the city clerk, shall be elected in the same manner, for the same term, and at the same time, as the judge of the recorder's court, and may be removed prior to the expiration of their respective terms of office in the same manner as the judge. The compensation of said officials shall be set by the mayor and council at the time of their election and may not be diminished during their term of office."

Section 3. Said Act is further amended by adding a new section 16 as follows:

"Section 16. All employees of this city, not otherwise provided for herein or elsewhere in this charter, shall remain in the position in which they have been employed permanently and during good behavior, and the compensation shall not be decreased, except as may be provided by a general percentage decrease uniformly applied to all city employees, except they may be suspended without pay by the mayor for good and just

cause in writing, until the next regular meeting of the mayor and council, at which time said employee shall be entitled to a hearing by the mayor and council who shall have the final authority to discharge, reprimand, reduce the employee in grade, suspend or reinstate."

Section 4. This ordinance amending the charter of the City of Mountain View shall take effect immediately upon its enactment and adoption.

Section 5. All laws and parts of laws in conflict herewith are hereby repealed.

The above ordinance duly adopted at the Regular September Meeting of the Municipal Governing Authority, this 12th say of September, 1977.

/s/ Jim Harrison
Mayor, Pro Tem
/s/ Keith A. Hurlin
Councilman
/s/ Eddie L. McCloudy
Councilman
/s/ H. C. Biddy
Councilman
/s/ June Williams
City Clerk

The above ordinance duly and finally adopted at the Regular October Meeting of the Municipal Governing Authority, this 3 day of October, 1977.

/s/ Ray King
Mayor
/s/ Keith A. Hurlin
Councilman
/s/ Jim Harrison
Councilman
/s/ H. C. Biddy
Councilman
/s/ Eddie L. McCloudy
Councilman
/s/ June Williams
City Clerk

I, June L. Williams, do hereby certify that I am City Clerk and Clerk of Council for the City of Mountain View and that the foregoing is a true and correct copy of the original amendment to the Charter of the City of Mountain View, Georgia as the same appears of record in my office.

Date: 5th Day of
October, 1977
/s/ June L. Williams
City Clerk
City of Mountain View

Notice.

Notice is hereby given that an ordinance will be presented to the mayor and council of the City of Mountain View for final adoption on October 3, 1977, at 7:30 P.M. at the City Hall in Mountain View to amend the charter of the city pursuant to authority granted by the Home Rule Bill, Georgia Laws 1965, pp. 298, 299, (Georgia Code Title 69-1017(a) and (b)1,) and will be presented for first reading on September 12, 1977 at 7:30 P.M. at the same place.

The proposed amendment will change the terms of office of the judge of the recorder's court, the city marshal and the city clerk from one (1) year to four (4) years, with removal for cause by four (4) members of the governing authority after notice and an opportunity to be heard; will eliminate appeals to the mayor and council from the recorder's court; will define additional duties to be imposed on the judge; will prohibit diminishing the compensation of said officials during their terms of office; will place all employees on a permanent basis and provide for their discharge only for cause and after a hearing by the mayor and council; will provide for the employment of a prosecutor in certain cases; will repeal inconsistent laws, and provide for an effective date.

A copy of the proposed amendment is on file in the office of the city clerk of the City of Mountain View at the City Hall, and in the office of the Clerk of the

Superior Court of Clayton County for the purpose of examination and inspection by the public.

/s/ June Williams
City Clerk

APPENDIX "E"

IN THE SUPERIOR COURT
FOR THE COUNTY OF CLAYTON
STATE OF GEORGIA

CITY OF MOUNTAIN VIEW, GEORGIA, et al.,
Plaintiffs

versus C.A. No. 16802

CLAYTON COUNTY, GEORGIA, et al.,
Defendants

HAZEL RUTH LOGAN, et al.,
Plaintiffs

versus C.A. No. 16792

W. E. STRICKLAND, Georgia State Revenue Commissioner, et al.,
Defendants

ORDER

This Court has found that Act No. 757 of the 1978 Session of the General Assembly, which had the effect of repealing the Act which created the City of Mountain View, is not unconstitutional for any reason advanced by the Plaintiffs in the above-referenced cases. As a result, unless that order is appealed to a higher tribunal, the City of Mountain View will cease to exist upon the entering of the final judgment in these cases. Such an action obviously will affect a great number of persons, notably the residents of the City of Mountain View. Therefore, in an effort to maintain the status quo until such time as an appeal from that order is filed, and, if an appeal is in fact filed, until such time as the appropriate appellate court of this State has finally ruled as to the validity of Act No. 757, it is the intent of this Court to enjoin the Defendants in a manner so as to preserve the status quo between the parties to these suits.

Therefore, subject to the conditions imposed below, this Court herewith enjoins the Defendants in each of the above-referenced cases from interfering with the ordinary functions of the operation of the City of Mountain View for a period of ten days after the entry of this order.

If at the end of the ten day period, the plaintiffs have not filed with this Court a notice of appeal from this Court's decision in the above-referenced cases, this injunction shall stand dissolved.

If within the ten days, the Plaintiffs have filed with this Court their notice of appeal to the appropriate state appellate court, the injunction granted above shall continue in force and effect until such time as the proper state appellate court has entered its final determination as to the constitutionality of Act No. 757 of the 1978 Session of the General Assembly of Georgia. Pursuant to this injunction, the Defendants are enjoined and restrained subject to the time constraints noted above, from interferring with the Plaintiffs in the carrying out of their normal functions of government of that portion of Clayton County set apart as the City of Mountain View, Georgia by Ga. L. 1956, p. 2518, as amended. The normal functions of government are hereby defined as being police protection, fire protection, the operation of the City Hall, the operation of the Recorder's Court, the enforcement of municipal ordinances, meetings of the City Council, garbage and refuse pick-up, payment of salaries to municipal employees, the furnishing of services to the citizens of the City and all other governmental functions normally performed by the municipality. Moreover, during the pendency of this injunction, all valid business licenses, including alcoholic beverage licenses previously issued shall remain in force and effect until they expire by their terms, and plaintiffs are authorized to carry out and perform such duties as have been conferred upon them by Ga.L. 1956, p. 2518, as amended and all such acts being approved prior to January 20, 1978.

As a condition to the grant of this injunction, those Plaintiffs in the two suits who are officials or employees of the City of Mountain View are prohibited from engaging in or carrying out any function which would not serve to preserve the status quo between the parties during the pendency of the injunction. Specifically, the Plaintiffs are prohibited from dissipating any municipal assets or incurring any debt which either by the frequency of occurrence or by its size constitutes a significant departure from the City's past practices. The Plaintiffs are prohibited from disbursing any monies to their officers and employees other than those salaries which are presently being paid.

As noted, it is the specific intent of this Court, in granting this injunction, to maintain the status quo between the Plaintiffs. Further, this injunction is conditioned upon the Plaintiffs committing no act which will operate to thwart the Court's expressed intent.

It is also the intent of the Court that Bennett G. Cloy shall continue to serve as the representative of this Court for the purpose of acting as its representative to audit and inventory all property, records, files, ledgers, minute books, checkbooks, bank records, bank accounts, audit reports and any and all other records relating to the finances or monetary income disbursed by the City of Mountain View. Said representative shall have the authority to examine any of these documents at any time he deems necessary. This injunction is further conditioned upon the Plaintiff's

providing said representative access to such documents.

It is the intent of this order that the Final Judgment and Decree of the Court entered this date in the foregoing cases, and the effect of Act No. 757 of the 1978 session of the General Assembly may have upon the Charter of the City of Mountain View be stayed and superseded until the Final Judgment of the proper Appellate Court of this State.

IT IS SO ORDERED, this 3rd day of March, 1978.

/s/ HUBERT C. MORGAN
HON. HUBERT C. MORGAN,
Judge Emeritus
Clayton Superior Court

APPENDIX "F"

IN THE SUPERIOR COURT
OF CLAYTON COUNTY
STATE OF GEORGIA

CITY OF MOUNTAIN VIEW, GEORGIA;

KEITH HURLEY, in his official capacity as Councilman for the City of Mountain View, Georgia, and individually as a resident and voter of said City;

JIM HARRISON, in his official capacity as Councilman for the City of Mountain View, Georgia, and individually as a resident and voter of said City;

EDDIE MC CLOUDY, in his official capacity as Councilman for the City of Mountain View, Georgia, and individually as a resident and voter of said City;

H. C. BIDDY, in his official capacity as Councilman for the City of Mountain View, Georgia, and individually as a resident and voter of said City;

ANNETTE KING, in her official capacity as Mayor of the City of Mountain View, Georgia, and individually as a resident and voter of said City;

WESLEY R. ASINOF, in his official capacity as Judge, Recorder's Court, City of Mountain View, and individually;

JUNE WILLIAMS, in her official capacity as Clerk, for the City of Mountain View, Georgia, and individually;

WILLIAM B. SMITH, in his official capacity as Chief of Police, City of Mountain View, Georgia, and individually;

and

HOWARD HILLIARD, individually and as a citizen and voter in the City of Mountain View, Georgia,
PLAINTIFFS,

versus

CLAYTON COUNTY, GEORGIA;

J. CHARLES GRISWELL, in his official capacity as Chairman, Board of Commissioners of Clayton County, Georgia;

LOREN B. CHEAVES, ED. P. ECHOLS, GERRY ADAMS, and ANNIE RUTH FORD, in their respective official capacities as Members of the Board of Commissioners of Clayton County, Georgia;

HOWARD SMITH, in his official capacity as Chief of Police, Clayton County Police Department;

ROBERT A. DEYTON, in his official capacity as Sheriff of Clayton County, Georgia, and

WILLIAM (BILL) LEE, RUDOLPH JOHNSON, JIMMY BENEFIELD, JIM WOOD and SENATOR TERRELL STARR, in their official capacities;
DEFENDANTS

ACTION FOR DECLARATORY JUDGMENT

COMES NOW, Plaintiffs above named in their respective capacities and individually, and for cause of action against the Defendants, show this Honorable Court the following:

COUNT ONE

1.

The City of Mountain View, Georgia, is a duly created municipal corporation having been incorporated as a municipality by ACTS 1956, pp. 2518, and has functioned as a City since the effective date of that Act, by and through that Act, and the Amendments thereto, and is a body politic of this State, located in Clayton County, Georgia, capable of bringing this suit in its own right, pursuant to applicable laws.

2.

Plaintiff KEITH HURLEY is a duly elected member of the governing authority of the City of Mountain View, Georgia, having been duly elected by the qualified voters of said City on December 4, 1976, and having been duly sworn for his term of two years as a Councilman for the City of Mountain View, Georgia, which ends on December 31, 1978. Plaintiff HURLEY is a citizen of said City and is a qualified voter thereof.

3.

Plaintiffs JIM HARRISON, EDDIE MC CLOUDY, and H. C. BIDDY, are duly elected members of the governing authority of the City of Mountain View, Georgia, having been duly elected by the qualified voters of said City on December 3, 1977, and having been duly sworn for their respective terms of two years as Councilmen for the City of Mountain View,

Georgia, which will end on December 31, 1979. Plaintiffs HARRISON, MC CLOUDY and BIDDY are citizens of said City, and are qualified voters thereof.

4.

Plaintiff ANNETTE KING is the Mayor of the City of Mountain View, Georgia, having been duly appointed to that office by the members of the City Council on January 1978, for the unexpired term.

5.

Plaintiff WESLEY R. ASINOF was duly elected by the governing authority of the City of Mountain View, Georgia, to the office of Judge, Recorder's Court of the City of Mountain View, Georgia, and contracted with them to perform the duties of said office for a term of four years, beginning January 1, 1978, at a non-reducible salary of ONE THOUSAND DOLLARS ($1,000.00) per month.

6.

Plaintiff JUNE WILLIAMS was duly elected by the governing authority of the City of Mountain View, Georgia, to the office of Clerk of the City of Mountain View, Georgia, and contracted with them to perform the duties and functions of said office for a term of four years, commencing on January 1, 1978, at a salary of ELEVEN THOUSAND FIVE HUNDRED DOLLARS, ($11,500.00) per year.

7.

Plaintiff WILLIAM B. SMITH, was duly elected by the governing authority of the City of Mountain View, Georgia, to the Office of Chief of Police, City of Mountain View, Police Department, and contracted with them to perform the duties and functions of that office for a term of four years, beginning January 1, 1978, at a non-reducible salary of ONE THOUSAND DOLLARS ($1,000.00) per month.

8.

Plaintiff HOWARD HILLIARD, is a citizen of the City of Mountain View, Georgia, and is a duly qualified elector in this State and is a recipient of the municipal services of the City of Mountain View, Georgia.

9.

Defendant CLAYTON COUNTY, GEORGIA, is a body corporate of this State and is subject to the jurisdiction of this Court.

10.

Defendants J. CHARLES GRISWELL, LOREN B. CHEAVES, ED P. ECHOLS, GERRY ADAMS and ANNIE RUTH FORD, comprise the governing body of the Defendant CLAYTON COUNTY, GEORGIA, to-wit, the Board of Commissioners of Clayton County, each respectively holding the office of Commissioner of Clayton County. Defendant GRISWELL is the Chairman, Board of Commissioners, Clayton County,

Georgia. Each individual Defendant named herein is a resident of said State and County and is subject to the jurisdiction of this Court and is being sued in their respective official capacities as such county officials.

11.

Defendant HOWARD SMITH has been appointed by the governing body of Clayton County to be Chief of the County Police Department, and currently exercises such duties and functions thereunto appertaining under the direction and control of the Commissioners of Clayton County, Georgia. Said Defendant supervises and controls the county police who have the same power to make arrests and to execute and return all criminal warrants and processes, in the County of their election and appointment only, as sheriffs now have. Defendant HOWARD SMITH is a resident of Clayton County, Georgia, and is subject to the jurisdiction of this Court.

12.

Defendant ROBERT A. DEYTON, is the duly qualified and elected current Sheriff of Clayton County, Georgia, and supervises and controls the deputy Sheriffs who have the power to arrest and to execute and return criminal warrants and process in this State. Defendant Deyton is a resident of Clayton County, Georgia, and is subject to the jurisdiction of this Court.

13.

Defendant Representatives WILLIAM B. (BILL) LEE, RUDOLPH JOHNSON, JIMMY BENEFIELD, and JIM WOOD, and Defendant Senator TERRELL STARR are sued in their official capacities herein and each is a resident of Clayton County, Georgia, and subject to the jurisdiction of this Court.

14.

This is a proceeding seeking a declaratory judgment by virtue of the provisions of Georgia Code Annotated Title 110, Chapter 11, which is codified from the Declaratory Judgment Act, Ga. L. 1945 p. 137; 1959, pp. 236, 237 and an action pursuant to ART. XI, Sec. I, P. IV of the Constitution of Georgia of 1976.

Plaintiffs show that there is an actual controversy between the Plaintiffs and Defendants as to the exercise of governmental powers over and the providing of services to the people residing in the geographical area and governmental entity currently known as the City of Mountain View, Georgia; that uncertainty and doubt exists as to the legal relationships between the Plaintiffs and Defendants and those people residing in the City of Mountain View, Georgia, and their respective rights; and that said actual controversy, uncertainty, doubt and chaotic condition arises out of the passage of House Bill 1228, (H.B. 1228) by the General Assembly of the State of Georgia, and purportedly enacted into law by the signature of the Honorable George Busbee, Governor of this State on January 20,

1978, said H.B. 1228 now being Act 757 of the 1978 session of the Georgia General Assembly, is attached hereto and incorporated by reference herein *in toto* as if more specifically set forth and alleged, as Exhibit "A". Said Act shall be hereinafter referred to for the purpose of clarity as "H.B. 1228."

15.

Plaintiffs show that ART. IX, Sec. IV, P. II of the Constitution of Georgia of 1976 provides:

> "In addition to and supplementary of any powers now conferred upon and possessed by any county, municipality, or any combination thereof, any county, any municipality and any combination of any such political subdivisions may exercise the following powers and provide the following services:
>
> (1) Police and fire protection.
>
> (2) Garbage and solid waste collection and disposal.
>
> (3) Public health facilities and services; including hospitals, ambulance, emergency rescue services, and animal control.
>
> (4) Street and road construction and maintenance; including curbs, sidewalks, street lights and devices to control the flow of traffic on streets and roads constructed by counties and municipalities or any combination thereof.

> (5) Parks, recreational areas, programs and facilities.
>
> (6) Storm water and sewage collection and disposal systems.
>
> (7) Development, storage, treatment and purification and distribution of water.
>
> (8) Public housing.
>
> (9) Urban redevelopment programs.
>
> (10) Public transportation system.
>
> (11) Libraries
>
> (12) Terminal and dock facilities and parking facilities.
>
> (13) Building, housing, plumbing, and electrical codes.
>
> (14) Air pollution control.
>
> (15) Planning and zoning, which is the power to provide within their respective jurisdictions for the zoning or districting of such political subdivisions for various uses and other or different uses prohibited in such zones or districts; to regulate the use for which said zones or districts may be set apart; and to regulate the plans for development and improvements on real estate therein.
>
> Except as otherwise provided in this Paragraph as to planning and zoning, nothing contained within this Paragraph shall operate to prohibit the General Assembly from enacting general laws relative to the above subject matters or to prohibit the General Assembly by general law from regulating, restricting or

limiting the exercise of the above powers, but, the General Assembly shall not have the authority to withdraw such powers. The General Assembly shall act upon the above subject matters only by general law. If population is used as a basis for classification of the applicability of any Act to any political subdivision or subdivisions of this State on the above subject matters, the Act shall apply only to political subdivisions of less than a specified population or shall apply to political subdivisions of more than a specified population. The General Assembly shall not, in any manner, regulate, restrict or limit the power and authority of any county, municipality, or any combination thereof, to plan and zone as herein defined.

Provided, however, that no City or County may exercise any such powers or provide any such service herein listed inside the boundaries of any other local governments except by contract with the City or County affected unless otherwise provided by any local or special law and no existing local or special laws or provision of this Constitution is intended to be hereby repealed.

Each county and municipality, and any combination thereof, shall have the authority to enact ordinances and to contract with each other in pursuance of this Paragraph and for the purpose of carrying out and effectuating

the powers herein conferred upon such political subdivisions and in order to provide such services. Any county, municipality, and any combination thereof, or the General Assembly, may provide for the creation of special districts within which the above services, or any portion thereof, shall be provided, and to determine and fix reasonable charges and fees for such services. In addition, the powers of taxation and assessment may be exercised by any county, municipality or any combination thereof, or within any such district, for the above powers and in order to provide such services."

16.

Plaintiffs show that Art XI, Sec. I, P. IV of the Constitution of the State of Georgia of 1976, provides:

"Local and private acts passed for the benefit of counties, cities, towns, corporations and private persons, not inconsistent with the Supreme law, nor with the Constitution and which have not expired nor been repealed, shall have the force of Statute law, subject to judicial decision as to their validity when passed, and to any limitation imposed by their own terms."

17.

Plaintiff, THE CITY OF MOUNTAIN VIEW, GEORGIA, and its governmental body, Plaintiffs,

KING, HURLEY, HARRISON, MC CLOUDY and BIDDY, in their respective capacities as Mayor and Councilmen, show that there are *no contracts* in existence with Defendant CLAYTON COUNTY, GEORGIA, or its governing body, Defendants GRISWELL, CHEAVES, ECHOLS, ADAMS, and FORD, in their respective capacities as Commissioners of Clayton County, Georgia, whereby Defendants may exercise the powers and services enumerated in Art. IX, Sec. IV, P. II, of the Constitution of Georgia of 1976, within the boundaries of the City of Mountain View, Georgia, and any attempts to do so before the validityof "H.B. 1228", which purports to repeal the charter of the City of Mountain View, Georgia, and which gives to Defendants the duty to exercise governmental functions and provide services within the boundaries of the City is established by judicial decision is in direct contravention of and repugnant to Art. IX, Sec. IV, P. II and Art. XI, Sec. 1, P. IV, of the Constitution of Georgia of 1976, as more specifically set forth in paragraphs 12 and 13 hereinabove, which are incorporated by reference herein.

18.

(a) By reason of Paragraphs 12, 13, and 14 hereinabove, Plaintiff WILLIAM B. SMITH, who exercises the power and provides the service of police protection under the direction of the Mayor and Council of the City of Mountain View, in his official capacity as Chief of Police of said City, specifically shows that the exercise of the power and providing of the service

of police protection in the City of Mountain View by Defendants HOWARD SMITH as Chief of the County police and ROBERT A. DEYTON, as Sheriff of Clayton County, under the direction and control of Defendants GRISWELL, CHEAVES, ECHOLS, ADAMS and FORD, in their respective official capacities, without a valid existing contract between the parties is in contravention of and repugnant to Art. IX, Sec. IV, P. II and Art. XI, Sec. I., P. IV of the Constitution of Georgia of 1976 as more specifically set forth in paragraphs 12 and 13 hereinabove, which are incorporated by reference herein.

(b) Plaintiff SMITH further shows that county police units, prior to the bringing of this action and before the validity of "H.B. 1228" is established, have set up a precinct within the city limits of the City of Mountain View, Georgia, and have endeavored to make arrests therein, despite the lack of any contractural authority and despite the fact that the police force of the city is adequate in numbers and is highly competent in ability to exercise the power and provide the service of police protection within said city, and the lawful enforcement of the ordinances of said city as well as the criminal statutes of this State.

19.

(a) Plaintiff HOWARD HILLIARD shows that the City of Mountain View, by and through the governing authority provides the following services, among others: police and fire protection, garbage and solid

waste collection and disposal, and a recreational area, programs, and facility for which he pays no taxes. "H.B. 1228", which purports to repeal the Charter of the City of Mountain View, would subject the area in which he lives to the control of the Defendants.

(b) HOWARD HILLIARD shows that Defendant CLAYTON COUNTY, by and through the other Defendants named herein, could provide police and fire protection, but would subject the Plaintiff to taxation for such service, thereby depriving him of property, to-wit: that sum of money which he now does not pay for these services, without due process of law, to-wit: that Plaintiff is guaranteed the right to contest local legislation by judicial proceedings by Art. XI, Sec. I, P. IV, of the Constitution of Georgia of 1976, and further, that by Constitutional provision, local acts do not become effective as statutory law until their validity is established by judicial decision.

(c) Plaintiff shows that the County cannot provide garbage and solid waste collection and disposal at the time of the filing of this suit, thereby subjecting Plaintiff HILLIARD to the incurring of a financial liability to a private company for service which is now provided by the City of Mountain View to HOWARD HILLIARD free of costs, thereby depriving HILLIARD of property, to-wit: monies expended for garbage pickup, without due process of law, to-wit: that Plaintiff is guaranteed the right to contest local legislation by judicial proceedings by Art. XI, Sec. I, P. IV of the Constitution

of Georgia of 1976, and further, by that constitutional provision, local acts do not become effective as statutory law until their vailidity is established by judicial decision.

(d) Plaintiff shows that the recreational area now provided by the City of Mountain View, contains several thousand dollars worth of facilities and improvements provided by the city of Mountain View at no cost to the citizens and that such recreational area and facilities will revert to the owner of the land, should the City of Mountain View cease to exist, thereby depriving the Plaintiff of the benefits of the recreational area and the improvements thereon without due process of law, to-wit: that Plaintiff is guaranteed the right to contest local legislation by judicial proceedings by Art. XI, Sec. I, P. IV., of the Constitution of Georgia of 1976, and further, that by constitutional provision, local acts do not become effective as statutory law until their validity is established by judicial decision.

20.

Plaintiffs herein show that "H.B. 1228", a local bill, which purports to repeal the Charter of the City of Mountain View, Georgia, would have the corollary effect of, allegedly, immediately vesting into the named Defendants herein the right to exercise powers and provide services which are normally associated with the functions of a governmental unit, within the boundaries of the City of Mountain View, Georgia, and to its

citizens, which right is an accrued right of Plaintiffs, and that a judicial determination is necessary in order to guide and protect the Plaintiffs from uncertainty and insecurity with respect to the propriety of their future acts and conduct, which are properly incident to the exercise of the authority of government according to law, by Plaintiffs. Public officers are the trustees and servants of the people and are at all times amenable to them. Plaintiff contends that "H.B. 1228" does not have the force and effect of statute law until its validity is determined by judicial decision and therefore, will continue to perform the functions and duties of their respective offices until such decision is rendered. Defendants contend that "H.B. 1228" brings the geographical area and citizens of the City of Mountain View, Georgia, under their authority and control immediately upon its enactment, and in accordance with said contention, has commenced to exercise the service of police power and to provide the service of police protection and is about to commence in the other powers and services hereinabove specified contrary to the rights of Plaintiffs, and that Defendants will do so before a judgment can be rendered in this proceeding, unless they are restrained and enjoined by the Court; and this conduct sought to be restrained will injure Plaintiffs and cause irreparable harm to the Plaintiffs in the following particulars:

1. The Plaintiffs will be subjected to civil liability and criminal liability for the performance of their official duties.

2. The City of Mountain View will be divested of certain valuable assets and property rights which cannot be replaced and cannot be satisfied by monetary damages, because the parties responsible are immune from suit, all to the detriment of the Plaintiffs, individually, as residents and voters of the City of Mountain View, Georgia.

3. The citizens and residents of Mountain View, Georgia, as well as those conducting businesses therein, including Plaintiffs, individually, will be subjected to two differing codes of ordinances, licensing requirements, planning and zoning acts, among others, each sought to be enforced by Plaintiffs and Defendants simultaneously. All of which gives rise to a chaotic condition which curtails the furnishing of adequate and sufficient services to the people and will cause certain businesses to suffer loss of customers upon whose merchandise and services the ad valorem tax provides the necessary funds for the continued operation of responsible government and the furnishing of services to the citizenry.

WHEREFORE, Plaintiffs seek a temporary restraining order against Defendants restraining and enjoining Defendants from exercising the powers and providing the services that are the normal functions of government, and maintaining the status quo of the parties until such time as the Court can consider the Plaintiffs' contention as to the constitutionality of "H.B. 1228"; and Plaintiffs further seek a judicial determination

whether "H.B. 1228" has not been validly enacted by the General Assembly and is of no force and effect.

COUNT TWO

21.

Paragraphs One through 14 of Count One hereinabove are re-alleged herein by reference, as if set forth in their entirety.

22.

Plaintiff KEITH HURLEY shows that "H.B. 1228" is repugnant to and in violation of Article XIII, Sec. I, P. I and that portion of Art. III, Sec. VII, P. IX, of the Constitution of Georgia, 1976, which reads:

> "No office to which a person has been elected shall be abolished, nor the term of the office shortened or lengthened by local or special bill during the term for which such person was elected unless the same be approved by the people of the jurisdiction affected in a referendum on the question."

23

(a) Plaintiff HURLEY shows that he was a duly elected and qualified officer of the City of Mountain View, a political subdivision of the State of Georgia, at the time of the effective date of the current constitution of this State, and as such an officer, is guaranteed

the right to continue in the exercise of his duties and functions (subject to applicable laws and subject to the provisions of the current Constitution) until the expiration of his term of office, December 31, 1978. Said right being guaranteed to Plaintiff HURLEY under Art. XIII, Sec. I, P. I, of the Constitution of the State of Georgia, 1976.

(b) Plaintiff KEITH HURLEY further shows that the office to which he was elected cannot be abolished nor his term of office shortened by local or special legislation during the term for which he was elected unless the abolition or shortening of his term is approved by the people of the jurisdiction affected, to-wit: the citizens of the City of Mountain View, Georgia, in a referendum upon the question, said right being guaranteed to Plaintiff under Art. III, Sec. VIII, P. IX, Constitution of the State of Georgia, 1976, which reads in pertinent part:

> "No office to which a person has been elected shall be abolished, nor the term of the office shortened or lengthened by local or special bill during the term for which such person was elected unless the same be approved by the people of the jurisdiction affected in a referendum on the question."

(c) Plaintiff HURLEY shows that "H.B. 1228" in its attempt to repeal the charter of the City of Mountain View, Georgia, has the effect of abolishing his office

during the term for which he was elected as well as shortening his term of office, all without a referendum of the citizens and residents of the City of Mountain View, Georgia, upon the question.

(d) Plaintiff HURLEY further shows that he labors under the constitutional dictate imposed by Art. I, Sec. II, P. I, Constitution of the State of Georgia, 1976, that he shall be the trustee and servant of the people of the City of Mountain View, Georgia, in the performance of his duties and the exercise of his functions as a public officer and is at all times amenable to them. "H.B. 1228" creates a state of uncertainty as to the continued existance of his office and the continued performance of his duties and exercise of his functions as a Councilman of the City of Mountain View, to whose citizens he is amenable and places him in actual controversy with Defendants as to the exercise of governmental functions and duties and the providing of services to these persons residing and doing business in the geographical boundaries and territorial and governmental limits of the City of Mountain View, Georgia. Therefore, Plaintiff HURLEY petitions this Court to declare his rights and the legal relationship of himself, the people of the territorial area presently comprising the City of Mountain View, Georgia, and the Defendants named herein.

24.

Plaintiffs JIM HARRISON, H. E. BIDDY and EDDIE MC CLOUDY show that "H.B. 1228" is repugnant to and in violation of that portion of Art. XII, Sec. VII, P. IX, which reads:

> "No office to which a person has been elected shall be abolished, nor the term of the office shortened or lengthened by local or special bill during the term for which such person was elected unless the same be approved by the people of the jurisdiction affected in a referendum on the question."

by reason of the following:

(a) Plaintiffs HARRISON, BIDDY and MC CLOUDY show that the offices to which they were elected, to-wit: Councilmen for the City of Mountain View, Georgia, as alleged in paragraphs two and three of Count One, incorporated by reference by Paragraph 21 hereinabove, cannot be abolished nor their terms shortened unless the abolition or shortening of his term is approved by the people of the jurisdiction affected, to-wit: the citizens of the City of Mountain View, Georgia, in a referendum upon the question, said right being guaranteed to Plaintiff under Art. III, Sec. VII, P. IX, Constitution of the State of Georgia, 1976.

(b) Plaintiffs HARRISON, BIDDY and MC CLOUDY show that "H.B. 1228", in its attempt to repeal the charter of the City of Mountain View, Georgia, has the effect of abolishing their offices during the term for which they were elected as well as shortening their terms of office, all without a referendum of the citizens and residents of the City of Mountain View, upon the question.

(c) Plaintiff's HARRISON, BIDDY and MC CLOUDY further show that they labor under the constitutional dictate imposed by Art. I, Sec. II, P. I, Constitution of the State of Georgia, 1976, that they shall be the trustees and servants of the people of the City of Mountain View, Georgia, in the performance of duties and the exercise of their functions as a public officer and is at all times amenable to them. "H.B. 1228" creates a state of uncertainty as to the continued existance of their offices and the continued performance of their duties and exercise of their functions as Councilmen of the City of Mountain View, to whose citizens they are amenable and places them in actual controversy with Defendants as to the exercise of governmental functions and duties and the providing of services to these persons residing and doing business in the geographical limits of the City of Mountain View, Georgia. Therefore, Plaintiffs HARRISON, BIDDY and MC CLOUDY, petition this Court to declare their rights and the legal relationship of themselves, the people of the territorial area presently comprising the City of Mountain View, Georgia, and the Defendants named herein.

COUNT THREE

25.

Paragraphs 1 through 14 of Count One are incorporated by reference herein as if set forth fully.

26.

(a) Plaintiff WESLEY R. ASINOF shows that "H.B. 1228" is repugnant to and in violation of Art. I, Sec., P. VII of the Constitution of the State of Georgia, 1976, which reads as follows:

> "No bill of attainder, ex post facto law, retroactive law, or law impairing the obligation of contracts, or making irrevocable grant of special privileges or immunities, shall be passed."

and, Article I, Sec. X, P. I, of the Constitution of the United States of America, as set forth more specifically as follows:

> "No State shall enter into any Treaty, Alliance, or Confederation; grant letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts or grant any Title of Nobility."

(b) Plaintiff, CITY OF MOUNTAIN VIEW, GEORGIA, by and through its governing authority, Plaintiffs HURLEY, HARRISON, MC CLOUDY and BIDDY in their official capacities as Councilmen of the City of Mountain View, Georgia, and the Mayor of said City, ANNETTE KING, pursuant to the authority

granted to them, in their official capacities, by the General Assembly of the State of Georgia, by Acts 1956, p. 2518, as amended, elected Plaintiff ASINOF to the office of Judge of the Recorder's Court of the City of Mountain View, and contracted with him to perform the duties and functions of said office for a term of four years, commencing on January 1, 1978, at a non-reducible salary of One Thousand Dollars ($1,000.00) per month.

(c) Plaintiff ASINOF shows that "H.B. 1228" purporting to repeal the charter of the City of Mountain View, Georgia, in its entirety, has the effect of impairing the obligation of his contract with the City of Mountain View, Georgia, to provide judicial services, an action which is prohibited to the State of Georgia, by Art. 1, Sec. X, P. I, of the Constitution of the United States, and to the General Assembly by Art. I, Sec. I, P. VII, Constitution of the State of Georgia, 1976, as hereinabove set forth.

(d) Plaintiff ASINOF shows that he labors under the constitutional dictate imposed by Art. I, Sec. II, P. I, Constitution of the State of Georgia, 1976, and shall be a trustee and servant of the people of the City of Mountain View, Georgia, in the performance of duties and the exercise of his functions as a public officer and is at all times amenable to them. "H.B. 1228" creates a state of uncertainty as to the continued existance of his office and the continued performance of his duties and exercise of his function as Judge of the Recorder's

Court of Mountain View, Georgia, to whose citizens he is amenable and places him in actual controversy as to who shall exercise judicial authority in the geographical boundaries and territories and governmental area presently comprising the City of Mountain View, Georgia.

27.

(a) Plaintiff JUNE WILLIAMS, shows that "H.B. 1228", is repugnant to and in violation of Art. I, Sec. I., P. VII, of the Constitution of the State of Georgia, 1976, and Article I, Sec. X, P. I, of the Constitution of the United States of America, as set forth in Paragraph 26 herein.

(b) Plaintiff, CITY OF MOUNTAIN VIEW, GEORGIA, by and through its governing authority, Plaintiffs HURLEY, HARRISON, MC CLOUDY and BIDDY in their official capacities as Councilmen of the City of Mountain View, Georgia, and the Mayor of Mountain View, ANNETTE KING, pursuant to the authority granted to them, in their official capacities, by the General Assembly of the State of Georgia, by Acts 1956, p. 2518, as amended, elected Plaintiff JUNE WILLIAMS to the office of Clerk of the City of Mountain View, Georgia, and contracted her to perform the duties and functions of said office for a term of four years, commending on January 1, 1978, at a salary of Eleven Thousand Five Hundred Dollars ($11,500.00) per year.

(c) Plaintiff WILLIAMS shows that "H.B. 1228" purporting to repeal the charter of the City of Mountain View, Georgia, in its entirety, has the effect of impairing the obligation of her contact with the City of Mountain View, Georgia, to provide clerical services, an action which is prohibited to the State of Georgia, by Art. 1, Sec. X, P. I, of the Constitution of the United States, and to the General Assembly of Art. I, Sec. I, P. VII, Constitution of the State of Georgia, 1976, as hereinabove set forth.

(d) Plaintiff WILLIAMS shows that she labors under the constitutional dictate imposed by Art. I, Sec. II, P. I, Constitution of the State of Georgia, 1976, and shall be a trustee and servant of the people of the City of Mountain View, Georgia, in the performance of duties and the exercise of her functions as a public officer and is at all times amenable to them. "H.B. 1228" creates a state of uncertainty as to the continued existance of her office and the continued performance of her duties and exercise of her function as Clerk of the City of Mountain View, to whose citizens she is amenable and places her in actual controversy as to who shall exercise clerical authority in the geographical boundaries and territories and governmental area presently comprising the City of Mountain View, Georgia.

28.

(a) Plaintiff WILLIAM B. SMITH, shows that "H.B. 1228", is repugnant to and in violation of Art. I, Sec. I.,

P. VII, of the Constitution of the State of Georgia, 1976, and Article I, Sec. X, P. I, of the Constitution of the United States of America, as set forth in Paragraph 26 herein.

(b) Plaintiff, CITY OF MOUNTAIN VIEW, GEORGIA, by and through its governing authority, Plaintiffs HURLEY, HARRISON, MC CLOUDY AND BIDDY in their official capacities as Councilmen of the City of Mountain View, Georgia, and the Mayor of Mountain View, ANNETTE KING, pursuant to the authority granted to them, in their official capacities, by the General Assembly of the State of Georgia, by Acts 1956, p. 2518, as amended, elected Plaintiff WILLIAM B. SMITH to the office of Chief of Police of the City of Mountain View, Georgia, and contracted him to perform the duties and functions of said office for a term of four years, commencing on January 1, 1978, at a salary of One Thousand Dollars ($1,000.00) per month.

(c) Plaintiff SMITH shows that "H.B. 1228" purporting to repeal the charter of the City of Mountain View, Georgia, in its entirety, has the effect of impairing the obligation of his contract with the City of Mountain View, Georgia, to provide police services, an action which is prohibited to the State of Georgia, by Art. 1, Sec. X, P. I, of the Constitution of the United States, and to the General Assembly of Art. I, Sec. I, P. VII, Constitution of the State of Georgia, 1976, as hereinabove set forth.

(d) Plaintiff SMITH shows that he labors under the constitutional dictate imposed by Art. I, Sec. II, P. I, Constitution of the State of Georgia, 1976, and shall be a trustee and servant of the people of the City of Mountain View, Georgia, in the performance of duties and the exercise of his functions as a public officer and is at all times amenable to them. "H.B. 1228" creates a state of uncertainty as to the continued existance of his office and the continued performance of his duties and exercise of his function as Chief of Police of Mountain View, Georgia, to whose citizens he is amenable and places him in actual controversy as to who shall exercise police authority in the geographical boundaries and territories and governmental area presently comprising the City of Mountain View, Georgia.

COUNT FOUR

29.

Paragraphs One through 14 of Count One hereinabove are re-alleged herein by reference, as set forth in their entirety.

30.

Plaintiff HOWARD HILLIARD shows that "H.B. 1228" is violative and repugnant to Art. I, Sec. II, P. I, and Art. II, Sec. I, P. I and II, and Art. II, Sec. II, P. I and II, of the Constitution of the State of Georgia, 1976, and seeks to have said Act declared unconstitutional and of no force and effect on the following particularly specified grounds:

(a) Plaintiff HOWARD HILLIARD shows that he is a citizen of the United States and of this State, is over eighteen years of age, is not laboring under any of the disabilities or disqualifications prescribed by the Constitution of this State and possesses the qualifications to register as an elector, and to vote in this State, and thus he did possess such qualifications on the first Saturday in December, 1976, and 1977, and that he did not labor under any disabilities or disqualifications prescribed by the Constitution of this State on the first Saturday of December, 1976 and 1977, and possessed the power to vote, having duly registered, and did vote in the municipal election conducted on the first day of December, 1976 and 1977.

(b) Plaintiff HILLIARD shows that he voted for Plaintiffs MC CLOUDY, HARRISON, and BIDDY on the first Saturday in December, 1977, and HURLEY on the first Saturday in December, 1976, and his vote, along with a majority of other duly qualified voters of the City of Mountain View, Georgia, elected these named Plaintiffs to the respective office of Councilman, for the City of Mountain View, Georgia, elected for a term of two years.

(c) Plaintiff HILLIARD shows that the right to choose who shall govern him guaranteed by Art. I, Sec. II, P. I, which states in pertinent part:

> "The people of this State have the inherent, sole and exclusive right of regulating their internal government, and the police thereof,

> and of altering and abolishing their Constitution whenever it may be necessary to their safety and happiness",

by the exercise of his right to vote, guaranteed to him by Art. II, Sec. I, P. I and II, and Art. II, Sec. II, P. I and II, will be denied to him by "H.B. 1228", which purports to repeal the Charter of the City of Mountain View, Georgia, and thereby has the effect of abolishing the offices of the municipality to which the Plaintiff HILLIARD had voted to elect Plaintiffs named hereinabove for a term of two years, such terms ending respectively, December 31, 1978, for Plaintiff HURLEY and December 31, 1979, for Plaintiffs HARRISON, MC CLOUDY and BIDDY.

(d) Plaintiff HILLIARD seeks a judicial decision that "H.B. 1228" is unconstitutional and of no force and effect because of the reasons alleged hereinabove.

COUNT FIVE

31.

Paragraphs One through 14 of Count One hereinabove are re-alleged by reference, as if set forth in their entirety.

32.

Plaintiffs show Art. III, Sec. I, P. I of the Constitution of Georgia of 1976 provides:

> "The legislative power of the State shall be vested in a General Assembly which shall consist of a Senate and House of Representatives".

33.

Plaintiffs show that Art. IX, Sec. III, P. I of the Constitution of Georgia of 1976 provides:

> "The General Assembly is authorized to provide by law for the self-government of municipalities and to that end is hereby expressly given the authority to delegate its powers so that matters pertaining to municipalities may be dealt with without the necessity of action by the General Assembly. Any powers granted as provided herein shall be exercised subject only to statutes of general application pertaining to municipalities."

34.

Plaintiffs show that Ga. L. 1965, p. 298, 299 (Ga. Code Ann. Sec. 69-1016) provides:

> "No municipality shall be incorporated, dissolved, merged or consolidated with any other municipality or municipal boundaries changed, except by local Act of the General Assembly or by such methods as may be provided by general law."

35.

Plaintiffs show that Ga. L. 1965, p. 298, 302; 1966, p. 296, 298; 1970, p. 346; 1973, p. 778, 780 (Ga. Code Ann. Sec. 69-1018) provides, in pertinent part, as follows:

> "The power granted to municipalities in subsections (a) and (b) of section 69-1017 shall not be construed to extend to the following matters or any other matters which the General Assembly by general law has pre-empted or may hereafter perempt, but such matters shall be the subject of general law or the subject of local Acts of the General Assembly to the extent that the enactment of such local Acts is otherwise permitted under the Constitution . . ."

None of the limitations are pertinent because they do not deal with power of dissolution of a municipal corporation.

36.

By reasons of paragraphs 32, 33, and 35 hereinabove, Plaintiffs show that that portion of Ga. L. 1965, p. 289, 299 which purports to permit the General Assembly by local Act to incorporate, dissolve, merge or consolidate municipalities or change municipal boundaries is in violation of and repugnant to Art. IX, Sec. II, P. I of the Constitution of Georgia of 1976, as more specifically set forth in paragraph 33 hereinabove.

37.

The General Assembly delegated the power to dissolve statutes of a municipal corporation by general application by Act 1965, p. 298, 299; 1966, p. 296; 1976, 1429 (Ga. Code Ann. Sec. 69-1017), having not pre-empted the matter by general law, and not having enumerated said power to dissolve as one of those matters which is contemplated as a limitation or home rule for municipalities as more specifically shown by paragraph 35 hereinabove; therefore, "H.B. 1228" contravenes and is repugnant to the CONSTITUTION OF GEORGIA OF 1976, as more specifically shown hereinabove.

COUNT SIX

38.

Paragraphs One through 14 of Count One hereinabove are re-alleged by reference, as if set forth in their entirety.

39.

Defendants Representatives WILLIAM J. (Bill) LEE, RUDOLPH JOHNSON, JIMMY BENEFIELD, and JIM WOOD, and Senator TERRELL STARR in the respective capacities as members of the General Assembly from Clayton County, have prepared "H.B. 1228" as local legislation, have sponsored the same and have signed their names in their official capacities to advertisements of the same printed in a newspaper published by Defendant WOOD in Clayton County, Georgia.

Defendants LEE, JOHNSON, BENEFIELD, WOOD, and STARR are indispensible parties in this action seeking a judicial declaration that their local bill, "H.B. 1228" purportedly enacted into law by the General Assembly and its signing by the Governor, contravenes the Constitution of this State. Plaintiffs show that an actual controversy exists between the Plaintiffs and Defendants LEE, JOHNSON, BENEFIELD, WOOD, and STARR as to the operations of the City of Mountain View, Georgia.

40.

(a) Plaintiffs show that "H.B. 1228" is violative of and repugnant to Art. IX, Sec. III, P. I, which reads:

> "The General Assembly is authorized to provide by law for the self-government of municipalities and to that end is hereby expressly given the authority to delegate its powers so that matters pertaining to municipalities may be dealt with without the necessity of action by the General Assembly. Any powers granted as provided herein shall be exercised subject only to statutes of general application pertaining to municipalities",

and Art. XI, Sec. I, P. III, of the Constitution of Georgia, 1976:

> "All laws now of force in this State, not inconsistent with this Constitution shall remain

> of force until the same are modified or repealed by the General Assembly".

(b) Ga. L. 1947, p. 1543 (Ga. Code Ann. Sec. 69-105) providing for the dissolution of municipal corporations is a law of general application pertaining to municipalities. Having been in force in this State at the time of the adoption of the Constitution, State of Georgia, 1976, and not inconsistent thereto, Ga. L. 1947, p. 1545 remains of force as law in this State under Art. XI, Sec. I, P. III. Additionally, this legislative enactment is third in authority to the Supreme law and is paramount in authority to "H.B. 1228" which is a local Act made subordinate to laws of general application by Art. XI, Sec. I, P. IV, Constitution, State of Georgia, 1976.

(c) Art. IX, Sec. III, P. I, having allowed for the delegation of powers for the self-government of municipalities, and that portion and Ga. L. 1965, p. 289, 299 (Ga. Code Ann. Sec. 69-1016) which purports to allow for local legislation in the matter of dissolution of municipalities being repugnant thereto, and, therefore, unconstitutional and of no force and effect, Ga. L. 1947, p. 1545 (Ga. Code Ann. Sec. 69-105) becomes the exclusive method of dissolving a municipal corporation in this State. The Plaintiffs show that no referendum has taken place to abolish said City and, in any event, the City is a vibrant entity, functioning under its Charter and has not lapsed into the conditions required by Ga. L. 1947, p. 1545.

41.

Plaintiffs show that the Court should designate a time not earlier than 20 days after the service of this Complaint, and that process issue thereon for a trial of this controversy.

WHEREFORE, PLAINTIFFS PRAY THAT:

(a) Process issue in terms of law requiring Defendants to answer this Complaint as required by law.

(b) The Defendants be required to file their defensive pleadings in said matter according to law.

(c) That the Defendants be temporarily restrained and enjoined from interfering with the Plaintiffs in the carrying on of their normal functions of government within that portion of Clayton County, Georgia contained within the boundaries of the City of Mountain View, Georgia, set apart by Acts 1956, p. 2518, the normal functions of government including, but being limited to, the police and fire protection, the operation of City Hall, the operation and functioning of the Recorder's Court, the enforcement of the municipal ordinances, meeting of Mayor and Council, garbage and refuse

collection and disposal, payment of salaries to municipal employees, the furnishing of services to the citizens of the City and all other governmental functions normally performed by a municipality in order to safeguard the public safety, health and welfare of the Community, until further order of the Court; and that the Defendants be required to show cause on a day certain why said temporary restraining order and injunction should not be continued as granted.

(d) That the Court settle and afford relief to Plaintiffs from the uncertainty and insecurity with respect to their rights, status, and other legal relations to Defendants by reason of the foregoing Complaint.

(e) That the Court judicially declare "H.B. 1228" to be invalid for the reasons hereinabove stated and of no force and effect as law.

(f) That Plaintiffs have such other and further relief as the Court deems mete and proper, and,

(g) Costs be cast against Defendants.

Respectfully submitted,

/s/ WESLEY R. ASINOF
WESLEY R. ASINOF
City Attorney
City of Mountain View
/s/ CLARENCE L. LEATHERS, JR.
CLARENCE L. LEATHERS, JR.
Attorney for Plaintiffs

GEORGIA
CLAYTON COUNTY

VERIFICATION

PERSONALLY APPEARED before me an officer duly authorized to administer oaths came the undersigned individuals, who state under oath that he/she is the Plaintiff named in the above and foregoing Complaint and that the facts contained within said Complaint are true and correct.

/s/ RAY KING
FOR THE CITY OF
MOUNTAIN VIEW, GEORGIA

/s/ JIM HARRISON
JIM HARRISON

/s/ H. C. BIDDY
H. C. BIDDY

/s/ WESLEY R. ASINOF
WESLEY R. ASINOF

/s/ WILLIAM B. SMITH
WILLIAM B. SMITH

/s/ KEITH HURLEY
KEITH HURLEY

/s/ EDDIE MC CLOUDY
EDDIE MC CLOUDY

/s/ ANNETTE KING
ANNETTE KING

/s/ JUNE WILLIAMS
JUNE WILLIAMS

/s/ HOWARD HILLIARD
HOWARD HILLIARD

Sworn to and subscribed
before me, this the 20th day of
January, 1978.

/s/ CLARENCE L. LEATHERS, JR.
NOTARY PUBLIC

My commission expires: Oct. 11, 1980

IN THE SUPERIOR COURT
OF CLAYTON COUNTY
STATE OF GEORGIA

City of Mountain View, et al

versus

Clayton County, et al

ORDER

The Defendants are ordered to be served with a copy of the Complaint and this Order and file responsive pleadings as provided by law and to show cause before this Court on the 3rd day of March, 1978 at 9:00 a.m., why the prayers of the Plaintiffs should not be granted.

In the meantime, the Defendants are temporarily enjoined and restrained from interfering with the Plaintiffs in the carrying on of their normal functions of government of that portion of Clayton County set apart to the City of Mountain View, Georgia, in the Act of incorporation of 1956, p. 2518. The normal functions of government are hereby defined as being police protection, fire protection, operation of City Hall, operation of a Recorder's Court, enforcement of municipal ordinances, meetings of City Council, garbage and refuse pickup, payment of salaries to municipal employees, the furnishing of services to the citizens of said City, and all other governmental functions normally performed by a municipality.

This order shall not be interpreted as granting or withdrawing any governmental immunity upon the officers, employees, agents or servants of the City of Mountain View.

The defendants are not enjoined or restrained from any duty imposed upon them by law.

All business license previously issued shall remain in force and effect until further order of the court.

IT IS FURTHER ORDERED that this Court having taken jurisdiction of the matter that BENNET G. CLOY shall be appointed representative of this court to act as Receiver to audit and inventory all property, records, files, ledgers, minute books, checkbooks, bank records, bank accounts, audit reports, and any and all other records relating to the finances or monetary income or disbursement of the City of Mountain View. Said Representative shall file with this Court a report as to such within 14 days of this Order.

SO ORDERED THIS 20th day of January, 1978, at 4:10 o'clock p.m.

/s/ HUBERT C. MORGAN
JUDGE, SUPERIOR COURT
CLAYTON JUDICIAL
CIRCUIT

H. B. No. 1228
By: Representatives Johnson, Benefield, Lee and Wood of the 72nd

A BILL TO BE ENTITLED
AN ACT

To repeal an Act entitled "An Act to create and incorporate the City of Mountain View, in the County of Clayton, Georgia, and grant a charter to that municipality under that name and style; to prescribe and define the corporate limits thereof; to provide a municipal government for said city, and to declare the rights, powers, privileges and liabilities of said corporation; to authorize said city to levy and collect a tax for purposes authorized herein; to authorize the construction of waterworks, sewers, streets, parks, and to provide for the payment of the same; to provide for granting franchises to persons, firms or corporations for construction and maintenance of public utilities; to declare and define the police powers of said city; to

declare and define the duties and powers of the officers of said city; to provide for the election of a mayor and council of said city; to provide for passage of ordinances and granting licenses for the conduct of business; to provide for a referendum before this Act becomes effective; and for other purposes.", approved February 23, 1956 (Ga. Laws 1956, p. 2518), as amended by an Act approved April 21, 1967 (Ga. Laws 1967, p. 3323), an Act approved April 25, 1969 (Ga. Laws 1969, p. 3636) and by an Act approved March 31, 1976 (Ga. Laws 1976, p. 3970); to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

Section 1. An Act entitled "An Act to create and incorporate the City of Mountain View, in the County of Clayton, Georgia, and grant a charter to that municipality under that name and style; to prescribe and define the corporate limits thereof; to provide a municipal government for said city, and to declare the rights, powers, privileges and liabilities of said corporation; to authorize said city to levy and collect a tax for purposes authorized herein; to authorize the construction of waterworks, sewers, streets, parks, and to provide for the payment of the same; to provide for granting franchises to persons, firms or corporations for construction and maintenance of public utilities; to declare and define the police powers of said city; to declare and define the duties and powers of the officers

of said city; to provide for the election of a mayor and council of said city; to provide for passage of ordinances and granting licenses for the conduct of business; to provide for a referendum before this Act becomes effective; and for other purposes.", approved February 23, 1956 (Ga. Laws 1956, p. 2518), as amended by an Act approved April 21, 1967 (Ga. Laws 1967, p. 3323), an Act approved April 25, 1969 (Ga. Laws 1969, p. 3636) and by an Act approved March 31, 1976 (Ga. Laws 1976, p. 3970), is hereby repealed in its entirety.

Section 2. All laws and parts of laws in conflict with this Act are hereby repealed.

AFFIDAVIT OF PUBLICATION

STATE OF GEORGIA
COUNTY OF CLAYTON

PERSONALLY appeared before the undersigned Jim Wood, Publisher who on oath says that he is Publisher of News/Daily, and that the legal advertisement which appears below was published in said newspaper on the following dates:

December 20, 27 and January 3, 1978

/s/ JIM WOOD
Jim Wood, Publisher

NOTICE

NOTICE OF INTENTION TO INTRODUCE LOCAL LEGISLATION

Notice is hereby given that there will be introduced at the regular 1978 session of the General Assembly of Georgia, a bill to repeal the Act incorporating the City of Mountain View in the County of Clayton, Georgia, approved February 23, 1956 (Ga. Laws 1956, p. 2518), as amended, and for other purposes.

This 20th day of December, 1977.

Rudolph Johnson
Representative, 72nd District
William J. Lee
Representative, 72nd District
Jim Wood
Representative, 72nd District
Jimmy Benefield
Representative, 72nd District
Terrell A. Starr
Senator, 44th District

Sworn to and subscribed
before me this 4th day
of January, 1978.

/s/ ELEANOR G. SIMON
Eleanor G. Simon
Notary Public

My Commission Expires Apr. 4, 1978
SEAL

H. B. No. 1228

Supreme Court, U. S.
FILED
JAN 22 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1010

THE CITY OF MOUNTAIN VIEW, GEORGIA; KEITH HURLEY, JIM HARRISON, EDDIE McCLOUDY, H. C. BIDDY, in their official capacities as Councilmen for the City of Mountain View, Georgia; ANNETTE KING, in her official capacity as Mayor of the City of Mountain View, Georgia; WESLEY R. ASINOF, in his official capacity as Judge, Recorder's Court, City of Mountain View, Georgia; JUNE WILLIAMS, in her official capacity of Clerk for the City of Mountain View, Georgia; WILLIAM B. SMITH, in his official capacity as Chief of Police of the City of Mountain View, Georgia; and HOWARD HILLIARD, individually and as a citizen and voter of the City of Mountain View, Georgia,

Appellants,

versus

CLAYTON COUNTY, GEORGIA; J. CHARLES GRISWELL, in his official capacity as Chairman, Board of Commissioners of Clayton County, Georgia; LOREN B. CHEAVES, ED P. ECHOLS, GERRY ADAMS, and ANNIE RUTH FORD, in their respective official capacities as Members of the Board of Commissioners of Clayton County, Georgia; HOWARD SMITH, in his official capacity as Chief of Police, Clayton County Police Department; ROBERT A. DEYTON, in his official capacity as Sheriff of Clayton County, Georgia; and ARTHUR BOLTON, in his official capacity as Attorney General of the State of Georgia,

Appellees.

APPEAL FROM THE SUPREME COURT OF GEORGIA

MOTION TO DISMISS OR IN THE ALTERNATIVE TO AFFIRM

Attorneys for Appellees
JOHN R. McCANNON
GLAZE, McNALLY AND GLAZE
CLAYTON COUNTY, ET AL.
120 North McDonough Street
Jonesboro, Georgia 30236

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No.

THE CITY OF MOUNTAIN VIEW, GEORGIA; KEITH HURLEY, JIM HARRISON, EDDIE McCLOUDY, H. C. BIDDY, in their official capacities as Councilmen for the City of Mountain View, Georgia; ANNETTE KING, in her official capacity as Mayor of the City of Mountain View, Georgia; WESLEY R. ASINOF, in his official capacity as Judge, Recorder's Court, City of Mountain View, Georgia; JUNE WILLIAMS, in her official capacity as Clerk of the City of Mountain View, Georgia; WILLIAM B. SMITH, in his official capacity as Chief of Police of the City of Mountain View, Georgia; and HOWARD HILLIARD, individually and as a citizen and voter of the City of Mountain View, Georgia,

Appellants,

versus

CLAYTON COUNTY, GEORGIA; J. CHARLES GRISWELL, in his official capacity as Chairman, Board of Commissioners of Clayton County, Georgia; LOREN B. CHEAVES, ED P. ECHOLS, GERRY ADAMS, and ANNIE RUTH FORD, in their respective official capacities as Members of the Board of Commissioners of Clayton County, Georgia; HOWARD SMITH, in his official capacity as Chief of Police, Clayton County Police Department; ROBERT A. DEYTON, in his official capacity as Sheriff of Clayton County, Georgia; and ARTHUR BOLTON, in his official capacity as Attorney General of the State of Georgia,

Appellees.

APPEAL FROM THE SUPREME COURT OF GEORGIA

MOTION TO DISMISS OR IN THE ALTERNATIVE TO AFFIRM

Now come Appellees, Clayton County, Georgia, J. Charles Griswell, Loren B. Cheaves, Ed P. Echols, Gerry Adams, Annie Ruth Ford, Howard Smith and Robert A. Deyton, and through their attorneys, move this Court pursuant to Rule 16 of the Rules of the Supreme Court of the United States, to dismiss the above styled action as there exists no substantial federal question, or in the alternative, to affirm the decision of the Supreme Court of the State of Georgia, as such rests on adequate state grounds.

BRIEF IN SUPPORT OF MOTION TO DISMISS OR IN THE ALTERNATIVE TO AFFIRM

STATEMENT OF THE CASE

On January 20, 1978, the Governor of the State of Georgia, signed into law a local act, No. 757 of the Georgia Legislature repealing the city charter of a Georgia municipality known as the City of Mountain View. Said act was submitted to the Justice Department of the United States for approval pursuant to the Voting Rights act of 1964. Appellants, certain city officials and municipal licenseholders instituted lawsuits in the Superior Court of Clayton County, Georgia, claiming that such an act violated, among other issues raised, the State and Federal Constitutions, prohibiting the impairment of the obligation of contract.

Named as defendants in the suit were various officials of the County and the Attorney-General of the State of Georgia.

On February 28, 1978, a hearing was held in the Superior Court and the constitutionality of the Act was

upheld. Thereafter, the plaintiffs (now appellants) appealed to the Supreme Court of Georgia.

On September 6, 1978, the Court unanimously upheld the constitutionality of the act and specifically held that the repeal of a municipal charter in Georgia does not operate to impair the obligation of contracts claimed under by the appellants in the action in violation of the State and Federal Constitution.

I.

THIS APPEAL PRESENTS NO SUBSTANTIAL FEDERAL QUESTION AS THE REPEAL OF A MUNICIPAL CHARTER IS NOT AN IMPAIRMENT OF THE OBLIGATION OF CONTRACT.

Motions to dismiss are proper before this Court when there is lack of substance in the federal question raised. *Bodkin v. Edwards*, 255 U.S. 221, 65 L. Ed. 595, 41 S. Ct. 268, *Pearson v. Dodd*, 429 U.S. 396, 50 L. Ed. 2d. 574, 97 S. Ct. 581. Appellees contend that no substantial federal question is presented by this appeal and it should therefore, be dismissed.

This Court has long adhered to the proposition that the creation of a municipality by a state is a purely political act and no constitutionally protected contractual obligation arises between the state and the municipality as a result of their relationship. *Dartmouth College Case*, (U.S.) 4 Wheat 518, 4 L. Ed. 629; *Laramie County v. Albany County*, 92 U.S. 307, 23 L. Ed. 552; *Mt. Pleasant v. Beckwith*, 100 U.S. 514, 25 L. Ed. 699; *Kelley v. Pittsburgh*, 104 U.S. 78, 26 L. Ed. 658; *Hunter v. Pittsburgh*, 207 U.S. 161, 52 L. Ed. 151, 288 S. Ct. 40; *Pawhuska v. Pawhuska Oil & Gas Co.*, 250 U.S. 394, 63 L. Ed. 1054,

39 S. Ct. 526; *Trenton v. New Jersey*, 262 U.S. 182, 67 L. Ed. 937, 43 S. Ct. 534, 29 ALR 1471.

The only inroads on this basic theory are cases where a state legislature has attempted to deny racial minorities the right to vote (*Gomillion v. Lightfoot*, 364 U.S. 339, 5 L. Ed. 2d. 110, 81 S. Ct. 125) or where the state has attempted to discharge debts or obligations of a municipality by dissolving it (*Graham v. Folsom*, 200 U.S. 248, 50 L. Ed. 464, 26 S. Ct. 245). In the present controversy these issues are not present as no claim of racial discrimination has been raised and no claims by potential creditors have been raised in the case.

However, appellants claim that the revoking of a municipal charter without the permission of the "Registered and Qualified voters residing in said city limits" violated the contract clause of the United States Constitution. This claim may be answered, by stating what this Court said, speaking through Mr. Justice Murphy, in *Hunter v. Pittsburgh, Supra*, 207 U.S. at 178, 179:

> The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state. Neither their charters nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes . . . constitutes a contract with the state within the meaning of the Federal Constitution. The state therefore, at its pleasure may . . . repeal the charter, and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest.

Therefore, there is no substantial federal question raised by appellants and the appeal should be dismissed.

II.

THE ISSUES PRESENTED THIS COURT BY APPELLANTS WERE DECIDED ON ADEQUATE STATE GROUNDS AND THE DECISION OF THE SUPREME COURT OF GEORGIA SHOULD THEREFORE BE AFFIRMED.

Motions to affirm are proper before this Court when there is no substantial question presented and the decision rests on adequate state grounds. *Pennsylvania Co. v. Donat*, 239 U.S. 50, 60 L. Ed. 139, 36 S. Ct. 4; *Chicago, R. I. & P. R. Co. v. Devine*, 239 U.S. 52, 60 L. Ed. 140, 36 S. Ct. 27.

Appellants claim that a state constitutional provision (Ga. Const., Art. III, Sec. III, Par. IX, Ga. Code Ann., §2-1309) prohibiting the abolishment of elective offices during their term created a contract between the people of the state and their local municipal officials. This claim is frivolous in that, the Supreme Court of Georgia, interpeted this provision as preventing the legislature through local legislation from amending or abolishing the term of a specified elective office to remove an incumbent or prolong his tenure. (See Appellants Jurisdictional Statement, pg. 5a). There is no contractual question raised under the Federal Constitution.

As the question raised is solely a state question requiring the construction of the State Constitution as to the forms to be followed in the state legislature, and this question does not require the construction of the Federal Constitution, it necessarily follows that the decision of the Supreme Court of Georgia should be conclusive, and should be followed by this Court.

Wherefore, the decision of the Supreme Court of Georgia should be affirmed.

III.

CONCLUSION

Appellants have raised no substantial federal questions and decisions of this Court clearly foreclose any further argument on the questions involved with the repeal of a municipality. Appellees, therefore, respectfully request that their Motion to Dismiss or in the Alternative to Affirm be granted by this Court.

Respectully submitted,

Attorneys for Appellees

JOHN R. MCCANNON

GEORGE E. GLAZE

KIRBY A. GLAZE

motion to affirm

Supreme Court, U. S.
FILED
JAN 17 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1978

NO. 78-1010

THE CITY OF MOUNTAIN VIEW, GEORGIA, et al.,
Appellants,

v.

CLAYTON COUNTY, GEORGIA, et al.,
Appellees.

On Appeal From The Supreme Court Of Georgia

MOTION OF APPELLEE ARTHUR K. BOLTON, ATTORNEY GENERAL OF THE STATE OF GEORGIA, TO AFFIRM

ARTHUR K. BOLTON
Attorney General

ROBERT S. STUBBS, II
Executive Assistant
Attorney General

DON A. LANGHAM
First Assistant
Attorney General

MICHAEL J. BOWERS
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Assistant Attorney General

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Arthur K. Bolton

132 State Judicial Building
Atlanta, Georgia 30334

January, 1979

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IN THE

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THE CITY OF MOUNTAIN VIEW, GEORGIA, et al.,
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Appellees.

On Appeal From The Supreme Court Of Georgia

MOTION OF APPELLEE ARTHUR K. BOLTON, ATTORNEY GENERAL OF THE STATE OF GEORGIA, TO AFFIRM

Appellee Arthur K. Bolton, Attorney General of the State of Georgia, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, moves this Court to affirm the decision of the Supreme Court of Georgia on the ground that it is manifest that the question on which the decision of the cause depends is so insubstantial and the decision below is so obviously correct as not to need further argument.

QUESTION PRESENTED

The appellants have set forth two questions in their jurisdictional statement. This appellee submits that both of these questions are contained in the following question:

> Whether the abolition of municipal offices by virtue of the repeal by the General Assembly of Georgia of the charter of a municipality violates the Contract Clause of the United States Constitution as to the appellant municipal officeholders.

CONSTITUTIONAL PROVISION INVOLVED

Article I, Section 10, Paragraph I

No State shall . . . pass any . . . Law impairing the Obligation of Contracts. . . .

ARGUMENT

I. THE RELATIONSHIP BETWEEN THE APPELLANT OFFICEHOLDERS AND THE MUNICIPALITY IS NOT CONTRACTUAL.

As a preliminary matter, the appellants' claim requires a determination of whether the repeal by the General Assembly of Georgia of the charter of the City of Mountain View has the effect of impairing a contractual obligation. *See United States Trust Co. v. New Jersey*, 431 U.S. 1, 17 (1977). In other words, is the relationship between the appellant officeholders and the City of Mountain View contractual in nature?

As long ago as 1850, this Court provided an answer to the question in *Butler v. Pennsylvania*, 10 How. 401 (1850). In that case, this Court unequivocally held that no obligation protected by the Contract Clause existed between the State of Pennsylvania and the appellant canal commissioners whose manner of appointment and compensation had been altered during their terms of office by

an act of the state legislature. The Court's language in *Butler* is dispositive here:

> "The selection of officers, who are nothing more than agents for the effectuating of . . . public purposes, is [a] matter of public convenience or necessity, and so too are the periods for the appointment of such agents; but neither the one nor the other of these arrangements can constitute any obligation to continue such agents, or to reappoint them, after the measures which brought them into being shall have been found useless, shall have been fulfilled, or shall have been abrogated as even detrimental to the well-being of the public." *Id.* at 417. [Bracketed matter added]

Once the General Assembly of Georgia repealed the charter of the City of Mountain View, over which it had virtual absolute control, *Trenton v. New Jersey*, 262 U.S. 182 (1923); *Hunter v. Pittsburgh*, 207 U.S. 161 (1907),[1] the offices of the appellant officeholders, as the municipality itself, ceased to exist. Upholding the appellants' claim would have the effect of precluding the exercise by the General Assembly of one of its most important powers—the creation and abolition of municipalities in the State of Georgia—an essential attribute of State sovereignty. *See Gomillion v. Lightfoot*, 364 U.S. 339 (1960).[2] The holdings of this Court interpreting the reach of the Contract Clause do not require the surrender by a state of such an essential attribute of its sovereignty. *See United States Trust Co. v. New Jersey, supra* at 23.

Turning to State law, the power of the General Assembly of Georgia to abolish municipalities is well established. *Troup County Electric Membership Corp. v. Ga. Power Co.*,

---

[1] *See also Gomillion v. Lightfoot*, 364 U.S. 339 (1960).

[2] "We [the Court] freely recognize the breadth and importance of this aspect of the State's political power." *Id.* at 342.

229 Ga. 348, 191 S.E. 2d 33 (1972).[3] Similarly, the power of the General Assembly to abolish offices which it creates, such as those of the appellant officeholders,[4] is well established. In *Collins v. Russell*, 107 Ga. 423, 33 S.E. 444 (1899), the Supreme Court of Georgia, citing *Butler v. Pennsylvania*, *supra*, held:

> "There can be no question about the proposition that the legislative power of the State is absolute with respect to all offices that it creates, where no constitutional restriction is placed upon its power with reference to such offices. The incumbent of such an office does not hold the same by virtue of any sort of contract, express or implied, with the State or its lawmaking powers, which gives him a vested right in the office. He accepts the office subject to the control of it by any legislative action and reference thereto which might thereafter be taken. The legislature may abolish the office before his term expires. . . ." *Id.* at 426, 33 S.E. 445.

The principle enunciated by the Supreme Court of Georgia in *Collins v. Russell*, *supra*, aligns precisely with that set forth by this Court in *Butler v. Pennsylvania*, *supra*, and is not merely a matter of historical note in the State of Georgia. *See Smith v. Abercrombie*, 235 Ga. 741, 749, 221 S.E. 2d 802, 808 (1975).

[3] ". . . [M]unicipalities are creatures of the legislature, and their existence may be established, altered, enlarged or diminished, or utterly abolished by the legislature." *Troup County Electric Membership Corp. v. Ga. Power Co.*, *supra* at 352, 191 S.E. 2d at 37.

[4] The offices of the appellant Mayor and City Councilmen were created directly by the General Assembly of Georgia by enactment of Ga. Laws 1956, p. 2518 (Appendix "D" of Jurisdictional Statement). The offices of the appellant Judge of the Recorder's Court, City Clerk and Chief of Police were created by an ordinance (Appendix "D(1)" of Jursidictional Statement) amending the city charter. The ordinance was enacted on September 12, 1977, by the Mayor and Council as authorized by the Municipal Home Rule Act of 1965 [Ga. Laws 1965, p. 298, as amended (Ga. Code Ann. § 69-1015, *et seq.*, in particular Ga. Code Ann. § 69-1017(b)(1)].

Nevertheless, the appellants have possibly confused the question presented by this appeal by reciting as a part of their view of such question their wholly unfounded legal conclusion that the Constitution of the State of Georgia [5] guarantees that their offices may not be abolished without a referendum. The appellants' faulty conclusion is purportedly based upon language in the Georgia Constitution which provides, in pertinent part, that:

> "No office to which a person has been elected shall be abolished, nor the term of the office shortened or lengthened by local or special bill [6] during the term for which such person was elected unless the same be approved by the people of the jurisdiction affected in a referendum on the question." Ga. Code Ann. § 2-1309.

The Supreme Court of Georgia held in this case that as a matter of State law the quoted State constitutional provision has no applicability to the abolition of offices incidental to the repeal of a municipality's charter. *City of Mountain View v. Clayton County*, 242 Ga. 163, 166, ___ S.E. 2d ___ (1978). Furthermore, as such holding is strictly a matter of State law, the appellants are unable in this Court to challenge such holding. *Henry v. Mississippi*, 379 U.S. 443, 446-7 (1965); *Murdock v. City of Memphis*, 20 Wall. 590 (1874). Thus, the quoted State constitutional provision is irrelevant to the appellants' claim.

The fact of the matter is simply that the appellants have presented to this Court nothing other than the question of whether a state legislature may repeal a municipal charter with the incidental effect of abolishing the offices

[5] Georgia Constitution Art. III, Sec. VII, Par. IX (Ga. Code Ann. § 2-1309).

[6] The statute challenged here, Act No. 757 (Ga. Laws 1978, p. 3003), is a local bill (Appendix "B" of Jurisdictional Statement).

of the appellant municipal officeholders. The Supreme Court of Georgia has held that State law is no impediment to such abolition, *City of Mountain View v. Clayton County*, *supra*, and this Court has squarely held that such abolition is not barred by the Contract Clause as no contract exists. *Butler v. Pennsylvania*, *supra*.

With no contractual relationship existing between the appellant officeholders and the City of Mountain View, the appellants' claim, grounded as it is on the Contract Clause, is clearly insubstantial.

II. IF A CONTRACT EXISTS BETWEEN THE APPELLANT OFFICEHOLDERS AND THE MUNICIPALITY, TERMINATION OF SUCH CONTRACT BY ABOLISHING THE MUNICIPALITY DOES NOT VIOLATE THE CONTRACT CLAUSE.

Even if a contract were to be found to exist between the appellant officeholders and the City of Mountain View, it is clear that the laws which existed at the inception of the contractual relationship form a part of the contract as if such laws were expressly referred to or incorporated into its terms. *Van Hoffman v. City of Quincy*, 4 Wall. 535, 550 (1866).

Long before the creation of Mountain View by the General Assembly of Georgia in 1956, the law of Georgia was well settled as to rights *vel non* of incumbents to their offices. Over one hundred years ago, the Supreme Court of Georgia, in *City Council of Augusta v. Sweeney*, 44 Ga. 463, 9 Am.R. 172 (1870), stated that:

> "The right of an incumbent to an office does not depend on any contract, in the sense of a contract, in the sense of a bargain between him and the public. His right depends on the law, under which he holds. If that law be one capable of being repealed by the power which acts, the right of the officer is gone." *Id.* at 466, 9 Am.R. at 174.

It cannot be denied, therefore, that the appellant officeholders began performance of the duties of their offices with the law governing their relationship with the municipality clear to the effect that such relationship was terminable by the authority which had at first enacted the municipal charter under which their offices were directly or indirectly created. It thus follows that the appellants cannot now invoke the Contract Clause to prevent exercise by the State legislature of one of the conditions to that relationship, whatever its nature. That condition was merely that the charter of the municipality might be repealed.

CONCLUSION

No contractual relationship exists between the appellant officeholders and the City of Mountain View, the charter of which was repealed by the challenged Act. Thus, the challenged Act cannot be said to have violated the Contract Clause of the United States Constitution. Furthermore, even if a contract were to exist, its terms most certainly must be said to have included, as a condition to the continued existence of that contract, the potential for repeal of the charter of the municipality with the incidental effect of abolishing the offices of the appellants.

Therefore, this appellee submits that the question presented by the appellants is insubstantial and that the decision by the Supreme Court of Georgia is obviously

correct. Consequently, this motion to affirm should be granted.

Respectfully submitted,

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